

China Human Rights and Rule of Law Update

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United States Congressional-Executive Commission on China

Senator Chuck Hagel, Chairman | Representative Jim Leach, Co-Chairman

Message From the Chairmen

UN Human Rights Day

December 10th marks UN Human Rights Day. On this day in 1948, the UN General Assembly adopted the Universal Declaration of Human Rights, an historic document that commits all governments to respect the fundamental rights and freedoms of all individuals. China is an original party to the Universal Declaration, and the Chinese Constitution confirms that the "State respects and safeguards human rights." In late November, the Chinese government sponsored a Human Rights Exhibition in Beijing to reaffirm its commitment to protect the human rights of all Chinese citizens.

Developments over the past month, however, undermine the government's stated commitment to respect the fundamental human rights of its citizens. Authorities in Shandong prevented defense witnesses from testifying at the November retrial of legal advocate Chen Guangcheng, who remains imprisoned for speaking out against violent abuses by local officials. In the last two weeks, Beijing courts rejected the appeals of journalists Zhao Yan and Ching Cheong, who remain imprisoned for investigative journalism regarding Party leaders. During that same period, Beijing police forced the cancellation of a conference on HIV/AIDS and held the conference organizer Wan Yanhai without charge.

The Commission urges the Chinese government to respect basic human rights like freedom of speech, freedom of the press, and freedom of association. The illegal actions of authorities in Shandong and Beijing contribute to the growing sense of frustration and disenfranchisement among Chinese citizens. Such a result can only undermine China's progress. Political change is complex and imperfect, but China's leaders must take steps to build a more open and participatory society, and the United States must continue to assist in that effort.

Announcements

Roundtable - Regulations on Religion: Recent Developments in Legislation and Implementation

On November 20, 2006, the CECC held another in its series of staff-led Issues Roundtables, entitled [China's National and Local Regulations on Religion: Recent Developments in Legislation and Implementation](#). The roundtable examined the interplay between the national Regulation on Religious Affairs and local regulations and discussed the practical impact of such regulations on freedom of religion in China. The panelists were: [Eric R. Carlson](#), Attorney, Covington & Burling LLP, Washington, D.C.; [Bob \(Xiqiu\) Fu](#), President, China Aid Association, Midland, Texas; and [James W. Tong](#), Associate Professor of Comparative Politics, University of California-Los Angeles.

New Resources: Chinese and HTML Versions of the CECC 2006 Annual Report

The CECC has prepared a version of its 2006 Annual Report in HTML format which includes citations with Chinese titles and links to underlying sources. In addition, the CECC has prepared a Chinese language version of its 2006 Annual Report Commission Finding, Executive Summary, List of Recommendations, and Introduction. These resources are available here: <http://www.cecc.gov/pages/annualRpt/annualRpt06/index.php>.

Update on Rights and Law in China

[Human Rights Updates](#) [Rule of Law Updates](#) [All Updates](#)

Chen Guangcheng Remains in Prison Following Flawed Retrial

The Yinan County People's Court in Linyi city, Shandong province, conducted a retrial of the [Chen Guangcheng](#) case on November 27, and on December 1 imposed the same guilty verdict and sentence that they had reached in his original trial, according to a December 1 Xinhua [report](#) (via the [China Internet Information Center](#)) and various international NGO and news media reports. The court found Chen guilty of "intentional destruction of property" (a crime under Article 275 of the [Criminal Law](#)) and "gathering people to disturb traffic order" (a crime under Article 291 of the [Criminal Law](#)), and sentenced him to four years and three months in prison. Chen's oldest brother, [Chen Guangfu](#), was the only family member allowed to attend the sentencing and later reported that Chen had reserved his right to an appeal after the judgment was read, according to a December 1 Associated Press [article](#) (reprinted in the Washington Post).

Chen Guangcheng is a self-trained legal advocate who drew international news media attention to [population planning abuses](#) in Linyi in 2005. Local authorities placed Chen under house arrest in September 2005 and formally [arrested](#) him on June 21, 2006. The Yinan County People's Court [first tried and sentenced](#) Chen in late August. [Li Jinsong](#), lead counsel on Chen's criminal defense team, filed an appeal in September arguing that at trial, the court had illegally deprived Chen of the right to be represented by criminal defense lawyers of one's own choosing. On October 31, the Linyi Intermediate People's Court vacated the original trial court judgment and [remanded the case for a retrial](#).

The conclusion of Chen's retrial is the latest development in a criminal case that has drawn repeated criticism for its criminal procedure violations. A November 20 Radio Free Asia (RFA) [report](#) (in Chinese) quotes [Li Fangping](#), another of Chen's defense lawyers, as saying that, "At the time of the original trial, Chen Guangcheng was deprived of his right to present a defense. Remanding for retrial could, on its surface, be a bit of a remedy, equivalent to saying that the lawyers can now participate. But as long as it is still the Yinan county court and, moreover, the same tribunal that makes the determination [in this case], I am not very optimistic about whether or not [that determination] will change in substance." Before and during Chen's retrial, local authorities took repressive measures that interfered with Chen's ability to present a defense and called into question the fairness of trials under China's criminal justice system. These included:

- **Failure to provide timely notification.** According to a November 23 RFA [report](#) (in Chinese), Li Fangping received court notification of the retrial date by phone on November 22. The report also said that Chen's wife [Yuan Weijing](#), his mother [Wang Jinxiang](#), his brother [Chen Guangjun](#), and several others from Chen's home village received notification of the November 27 date on November 23. According to a November 25 Epoch Times [report](#) (in Chinese), Chen did not know about the retrial date until Li Fangping met with him on November 24, three days before the trial.

In 2001, the Supreme People's Court (SPC) issued [Detailed Provisions on Court Hearing Procedures in Criminal Retrial Cases](#), and mandated under Article 9(6) that a court deliver notification and subpoenas to the defendant, his legal representative, and witnesses no later than seven days prior to the retrial.

- **Harassment of witnesses.** Human Rights in China (HRIC) reported in a November 27 [press release](#) that local authorities had placed four defense witnesses from Chen's home village ([Chen Guangdong](#), [Chen Guangyu](#), [Chen Gengjiang](#), and cousin [Chen Guanghe](#)) under house arrest or in official custody on the eve of his retrial. Unnamed sources told HRIC that Chen Guangdong and Chen Guangyu were "put under house arrest and prevented from appearing in court," and that the Yinan County Public Security Bureau held Chen Gengjiang in custody beginning around noon on November 26. HRIC cited to Beijing legal scholar Teng Biao, a member of Chen's criminal defense team, and oldest brother Chen Guangfu to report that on the same day, "they saw seven or eight men in plain clothes appear and take Chen Guanghe away." Chen Guanghe's family received a formal notice of his criminal detention on December 3, according to a December 4 RFA [report](#) (in Chinese). Chen's wife Yuan Weijing testified in court on November 27, according to the HRIC press release. She received formal notification that she was under house arrest on November 28, according to an RFA [report](#) (in Chinese) the next day.

Article 49 of the [Criminal Procedure Law](#) mandates that court, procuratorate, and public security officials ensure the safety of witnesses and their close relatives, and also provides for administrative or criminal sanctions against those who intimidate or retaliate against them. A June 1 People's Daily [report](#) (in Chinese) noted that one SPC judge has suggested the need for legislative reform to provide greater witness protection to those appearing in court to testify. RFA's November 20 report quotes Li Fangping as saying: "If the judiciary could function independently, a court notice to appear at trial would be a very effective way to put the law into play. A witness would have the duty to appear at trial and should appear at trial. No agency could obstruct him from arriving before the court to testify; otherwise, this would constitute the crime of obstructing witness testimony."

- **Reliance on confessions coerced under torture.** In its November 27 press release, HRIC reported that none of the four witnesses who were under house arrest or in official custody managed to testify at Chen's retrial. According to HRIC, Chen's brother Chen Guangjun testified at the retrial that police had previously detained him and "coerced him into providing testimony" for the prosecution in Chen's original trial. RFA's November 23 report noted that all five witnesses were charged together with Chen, and that their witness statements had been used to convict him during the first trial. Each witness alleged that his statement was coerced under torture, according to RFA. A November 27 New York Times [report](#) quotes Li Jinsong, Chen's lead counsel, as saying that, "Our witnesses were prepared to make clear that the evidence against Chen Guangcheng was based on forced confessions of several people who do not stand by their accusations against him. Those witnesses were prevented from attending the trial, and I believe we are headed toward another wrongful conviction."

Article 247 of the [Criminal Law](#) and new [provisions](#) issued by the Supreme People's Procuratorate prohibit and punish the use of torture to coerce a confession. The Chinese government is further bound by provisions in the

[Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (CAT), which it ratified in 1988. Wang Zhenchuan, Deputy Procurator-General of the Supreme People's Court, acknowledged at a November 18, 2006, seminar in Sanya city, Hainan province, that almost all [wrongful convictions in China involve police abuse](#) during the investigation stage. Official Chinese statistics show that only about 30 people are wrongfully convicted in China each year due to police abuses, but Wang said that the real number could be higher.

- **Denial of opportunities to present and confront evidence during retrial.** HRIC's November 27 press release cites unnamed sources as saying that during the retrial, a judge prevented Li Fangping from cross-examining a prosecution witness about contradictions in his statement. HRIC reported, "When Li insisted on being allowed to proceed, he was expelled from the court and was not allowed to return until after an adjournment." HRIC also reported that the judge refused a request by Li Jinsong to adjourn the trial until a later date due to the inability of several witnesses to appear in court.

Article 20 of the SPC's [Detailed Provisions on Court Hearing Procedures in Criminal Retrial Cases](#) guarantees the right of the defense to present and argue its own evidence at retrial relating to matters that the defense and prosecution disagree on. Article 21 guarantees the right of the defense to examine and confront the prosecution's evidence at retrial if the defense objects to the evidence upon which the original verdict or sentence was based, or if the prosecution presents new evidence at retrial.

Sharon Hom, Executive Director of HRIC, condemned the results of the retrial in HRIC's November 27 press release and stated that, "Abducting witnesses, obstructing the access of defense counsel to witnesses and preventing witnesses from appearing in court all violate both international and domestic legal standards that guarantee the accused the right to a fair trial by an independent and impartial tribunal." In addition to violating the provisions of domestic law cited above, local authorities deprived Chen of protection under Article 11(1) of the [Universal Declaration of Human Rights](#), which requires that a criminal defendant have "all the guarantees necessary for his [defense]." They also contravened Article 14.3(b) of the [International Covenant on Civil and Political Rights](#), which requires that a criminal defendant have "adequate time and facilities for the preparation of his [defense]," and Article 14.3(e), which requires that he be able "[t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." Jerome A. Cohen, an expert on Chinese law and legal advisor in the Chen case, testified before a Congressional-Executive Commission on China (CECC) [hearing](#) on September 20, 2006, that criminal cases such as Chen's and that of New York Times researcher [Zhao Yan](#) "are merely the tip of a criminal process iceberg that is largely concealed from the scrutiny of both Chinese and foreigners and that functions with cynical disdain for the country's criminal justice laws and international human rights standards." In a November 3 Wall Street Journal [op-ed](#) (subscription required), [Teng Biao](#) and Chinese democracy activist [Zhang Zuhua](#) wrote: "While we are relieved that [the decision to remand for retrial] favored Mr. Chen, China's judicial process remains as opaque as ever. Reversals of verdict in politically charged cases are rare."

For additional information on Chen's case, see the CECC's [Political Prisoner Database](#) and Section V(b), on the "Rights of Criminal Suspects and Defendants," in the CECC's [2006 Annual Report](#). Additional information on the "Right to Present a Defense" and the "Fairness of Criminal Trials and Appeals" is also included in the CECC's [2006 Annual Report](#).

Beijing Court Rejects Zhao Yan's Appeal, Affirms Three-Year Sentence

The Beijing High People's Court (HPC) upheld the fraud conviction and three-year sentence of Zhao Yan, a Chinese researcher for the New York Times (NYT) on December 1, 2006, the NYT [reported](#) (registration required) on the same day. The NYT cited Guan Anping, one of Zhao's lawyers, as saying that the Beijing HPC upheld the lower court's judgment based only on the written materials. The NYT [had reported](#) on November 4 that the Beijing HPC had rejected Zhao's request for a hearing in his appeal. Under Article 187 of the [Criminal Procedure Law](#), courts of second instance are not required to hold a hearing in a criminal appeal if a collegial panel makes a determination that the "facts are clear."

The Beijing No. 2 Intermediate People's Court [acquitted](#) Zhao of disclosing state secrets on August 25, but sentenced him to three years' imprisonment on an unrelated fraud charge. [Sources have said](#) the "state secret" was information that former President and Party General Secretary Jiang Zemin had offered to resign as Chairman of the Central Military Commission. His resignation was later reported in the official press.

With respect to the fraud charge, reports in China's state-run news media said that the court had provided Xinhua with a document saying that Zhao had gone to Jilin province in 2001 to investigate a story for "Baixing Xinbao," a subsidiary of the Legal Daily, a publication of the Ministry of Justice. According to Xinhua, Feng Shanchen, the story's subject, believed he had been prosecuted unjustly (the reports did not specify for what), and paid Zhao 20,000 yuan (US\$2,500) to use government connections to get his punishment rescinded.

[Jerome A. Cohen](#), an expert on Chinese law and advisor to the NYT on Zhao's case, testified before a Congressional-

Executive Commission on China (CECC) [hearing](#) on September 20, 2006, that Zhao was "sentenced to three years in prison after another trial that can only be regarded as a farce, and after highly illegal--according to Chinese law--pre-trial detention, interrogation, et cetera." In his [written statement](#) at that hearing, Professor Cohen said that the procedures in Zhao's detention and trial "shamed a great nation."

The CECC has [previously noted](#) several procedural problems with Zhao's case. Below is a summary of the timeline of these problems and other major events in the case:

- September 17, 2004: Officers from the Ministry of State Security detain Zhao.
- [October 20, 2004](#): Authorities formally arrest Zhao for "providing state secrets to foreigners."
- May 20, 2005: State security officials complete their investigation and transfer Zhao's case to the Beijing procuratorate for prosecution on charges of providing state secrets to foreigners and fraud.
- [August 31, 2005](#): The NYT reports that Zhao is forbidden to see his family, has lost 22 pounds, and that the government had denied his request for a biopsy and his lawyer's efforts to post bail. The report also raises questions about whether the state security officials legally acquired key evidence in the state secrets case.
- [December 7, 2005](#): Reporters Without Borders awards Zhao its 2005 Fondation de France Prize.
- [December 23, 2005](#): The Beijing procuratorate indicts Zhao for revealing state secrets and fraud.
- March 17, 2006: One month before President Hu Jintao was scheduled to visit the United States and meet with U.S. President George W. Bush, the Beijing procuratorate receives permission from the Beijing No. 2 Intermediate People's Court to withdraw its case. Mo Shaoping, Zhao's lead defense lawyer (who has represented several other political prisoners including [Feng Bingxian](#), [Li Changqing](#), [Xu Zhengqing](#), and [Zhang Lin](#)), is quoted as saying that, "by withdrawing the prosecution, there is no longer anyone to charge [the defendant], and without anyone to charge the defendant, there is no way for a court to find anyone guilty of a crime." Mo adds that under Chinese law, authorities should have released Zhao at that time.
- May 12, 2006: Three weeks after President Hu's meeting with President Bush, the Beijing procuratorate issues a new indictment that reinstates the prior charges against Zhao. Mo says that no Chinese law or judicial interpretation authorizes the procuratorate to resume prosecution after it has withdrawn a case, and that in Zhao's case, this action was taken with "no basis in law."
- [May 27, 2006](#): Mo reports that Chinese authorities have set a preliminary date of June 8 to try Zhao.
- June 16, 2006: The Beijing No. 2 Intermediate People's Court tries Zhao, but prevents the public, news media, potential defense witnesses, and his family from attending, and bars his lawyers from publicly commenting on specifics of the trial.
- [August 25, 2006](#): The Beijing No. 2 Intermediate People's Court acquits Zhao of providing state secrets, but sentenced him to three years' imprisonment on an unrelated fraud charge. The court also fined Zhao 2,000 yuan (US\$250) and ordered him to pay back 20,000 yuan (US\$2,500) that it ruled he had acquired through fraud.
- September 5, 2006: The Associated Press [reports](#) (via the Guardian) that Guan has filed an appeal arguing that the prosecution's evidence was insufficient and that the court did not allow a defense witness to testify.

Beijing Court Rejects Ching Cheong's Appeal, Affirms Five-Year Sentence

The Beijing High People's Court (HPC) rejected Hong Kong journalist Ching Cheong's appeal and upheld a lower court's guilty verdict for espionage on November 24, according to a Xinhua [report](#) (via the China Daily) published the same day. The report cited a Beijing HPC judge as saying that, in affirming Ching's [conviction](#) and sentence of five years' imprisonment and one year's deprivation of political rights for passing state secrets and military intelligence to Taiwan's Foundation on International and Cross-Strait Studies, the [Beijing No. 2 Intermediate People's Court's August 31 judgment](#) was "a correct application of the law and provided appropriate punishment." The Beijing HPC issued its decision without holding a hearing. According to an October 30 South China Morning Post [report](#) (subscription required), the Supreme People's Court notified Ching's lawyer on October 14 that it would not conduct a hearing, citing as one reason that Ching "had failed to provide evidence to prove the foundation was not a spy organization." Under Article 187 of China's [Criminal Procedure Law](#), courts of second instance are not required to hold a hearing in a criminal appeal if a collegial panel makes a determination that the "facts are clear."

Both the verdict and procedures in Ching's case have been the target of severe criticism in news media and legal circles, particularly in Hong Kong:

- Margaret Ng, Hong Kong Legislator: "The material evidence on which he was convicted by the Beijing court was a 'confession statement' taken during his long incarceration, when he was denied access to a lawyer or his family. It would not have been admitted as a voluntary confession in a Hong Kong court. In any event, it contained nothing like an admission of guilt," Margaret Ng, member of Hong Kong's Legislative Council and a practicing barrister in Hong Kong, wrote in an [opinion piece](#) (subscription required) in the South China Morning Post on November 3.
- Johannes Chan, Hong Kong University Law Professor: Chan published an [analysis](#) (via Reporters Without Borders) of the Intermediate People's Court judgment, saying it "is full of rash statements with loopholes everywhere. Many aspects are unconvincing, and one simply cannot find sufficient proof to support a conviction."

- Hong Kong Journalists' Association: In a November 24 [press release](#), the Hong Kong Journalists' Association stated:

The whole appeal process lacked transparency. The whole process was, once again, a violation of the fair, just, and open principles for trial as stipulated in the International Covenant on Civil and Political Rights. . . . Ching Cheong's case will have a chilling effect on journalists and increase self-censorship. It damages freedom of press and deprives the public of its rights to information.

- Foreign Correspondents' Club Hong Kong: The Chinese government's extended detention of Ching was "an unacceptable state of affairs and impinges on press freedom," according to [letters](#) dated December 10, 2005, which it sent to China's Ministry of Foreign Affairs and State Council, and Hong Kong's Chief Executive.
- Ming Pao: In a September 10, 2006, [editorial](#) (in Chinese), a reporter wrote in the Ming Pao: "Considering the two items of 'evidence' the court indicated, in fact there has never been anyone who confirmed to Ching Cheong that the foundation was an intelligence organ of Taiwan. Quite the opposite, Xue clearly denied this was the case. With respect to the pictures of naval ships, the People's Liberation Army visit to Hong Kong was a public event, and the pictures were not top secret materials."
- South China Morning Post: In a September 1, 2006, [editorial](#) (subscription required), the South China Morning Post wrote "The trial of journalist Ching Cheong on spying charges is a sad day for those who want to believe China's pledges that it is moving toward a society based on the rule of law."

In April 2005, agents from China's Ministry of State Security detained Ching, then the Hong Kong-based chief China correspondent for the Straits Times of Singapore, in Guangzhou city, Guangdong province, when he traveled there from Hong Kong to meet with a source. The following month Ministry of Foreign Affairs spokesman Kong Quan said Ching had confessed that "on the basis of the request of a foreign intelligence agency, he carried out intelligence-gathering activities in China, and collected large spying fees." In June 2005, Kong said "Ching Cheong has been gathering intelligence in China's mainland under the order and direction of an overseas intelligence agency." The Beijing State Security Bureau arrested Ching in August 2005.

The Chinese government's interpretation of what constitutes a state secret is so broad as to include essentially all matters of public concern. Jerome A. Cohen, Professor of Law at the New York University School of Law, told a CECC [hearing](#) on September 20, 2006, that it is easy "for someone who has contacts with foreign reporters to be convicted of illegally transmitting 'state secrets' or mere 'intelligence' to a foreign entity. What constitutes a 'state secret' or 'intelligence' remains a fluid concept in the PRC and is subject to arbitrary, even retroactive, interpretation by the authorities." The UN Working Group on Arbitrary Detention [identified the government's use of state secrets exceptions as an area of concern in the report on its September 2004 mission to China](#). Article 8 of the [State Secrets Law](#) and Article 4 of the [Measures for the Implementation of the Law on the Protection of State Secrets](#) also define state secrets to include information ranging from that which "concern[s] major policy decisions on state affairs" to that which "weakens the nation's economy or technological strength." In addition, the Chinese government has determined that it has the authority to classify documents as state secrets, even if the documents are publicly available, after Chinese citizens have provided them to foreigners. Officials have used this authority to imprison people such as housing rights activist [Zheng Enchong](#). In recent years, 70 percent of all cases of criminal disclosure of state secrets were the result of a "faulty understanding of state secrets," according to a May 1, 2005, Chengdu Daily [report](#) (via Xinhua, in Chinese). In [remarks](#) to the Foreign Correspondents' Club of Hong Kong on February 21, 2006, John Kamm, Executive Director of The Dui Hua Foundation, said that, "99 percent of all people tried for endangering state security are found guilty. In 2004, only five people were acquitted. This is the highest conviction rate of all crimes tried by Chinese courts." The unauthorized disclosure of state secrets is one of the many crimes characterized as "endangering state security" crimes, under Part II, Chapter I, of China's Criminal Law.

For more information on Ching Cheong's case, see the CECC's [Political Prisoner Database](#).

Chinese Government Appoints Bishop without Holy See Approval

The state-controlled Catholic Patriotic Association (CPA) ordained Wang Renlei as auxiliary bishop of the Xuzhou diocese, Jiangsu province, on November 30, according to remarks by a State Administration for Religious Affairs (SARA) spokesperson reported in a December 3 Xinhua article (in [Chinese](#) and [English](#)). The CPA conducted the ordination without Holy See approval, drawing criticism from the Holy See for "subverting the fundamental principles of [the Holy See's] hierarchical structure," according to a December 2 [statement](#) (in Italian) on the Vatican Web site. According to the SARA spokesperson, Wang's October 21 nomination to the post by clergy and religious followers adhered to "Catholic tradition and rules of the Chinese Catholic Bishop's Conference." The spokesperson said the CPA notified the Holy See in advance of Wang's nomination, and criticized the Holy See for opposing the ordination.

Wang's ordination follows the CPA's [April](#) and [May](#) ordinations of other bishops who also lacked Holy See approval. The spring ordinations marked a shift in recent CPA practice of accepting the Holy See's discreet involvement in the selection process. Although the CPA does not officially recognize the authority of the Holy See to appoint bishops in China, in line with Chinese laws and policies that religious organizations "are not subject to any foreign domination" (see, e.g., Article 36 of

the [Constitution](#)), in recent years the CPA had ordained bishops who had Holy See approval. China has no diplomatic relations with the Holy See, but the SARA spokesperson cited in the Xinhua article said that China remains ready to improve Sino-Holy See relations and hopes to carry out "constructive dialogue" on issues including the ordination of bishops.

Authorities reportedly detained two bishops on November 29 in connection with Wang's ordination, according to a November 29 [article](#) from AsiaNews. Officials transported the two bishops from Hebei province to Xuzhou to compel their participation in Wang's ordination ceremony, though one bishop escaped into hiding, according to a November 30 AsiaNews [article](#).

For more information, see "Religious Freedom for China's Catholics and China-Holy See Relations" in Section V(d), "Freedom of Religion," in the CECC 2006 [Annual Report](#).

Dalai Lama's Special Envoy Describes Status of Discussions With Chinese Government

Lodi Gyaltsen Gyari, the Dalai Lama's Special Envoy, described the obstacles affecting the dialogue between the Dalai Lama's representatives and Chinese officials during a November 14 address at the Brookings Institution in Washington, D.C. Gyari's [prepared statement](#), available on the Brookings Institution Web site, explains that his remarks were offered in part to respond to Chinese news media articles (see, e.g., [Xinhua](#), July 28, 2006) and official briefings to foreign diplomats that, according to Gyari, "led to the circulation of speculative, uninformed, and one-sided information about some of the important issues at stake." Gyari's statement, "Seeking Unity Through Equality: The Current Status of Discussions Between His Holiness the Dalai Lama and the Government of the People's Republic of China," is more detailed than statements made by Gyari after the previous five rounds of dialogue between representatives of the Dalai Lama and the Chinese government. (Gyari's [2002](#) and [2003](#) statements may be found on the Tibetan government-in-exile Web sites; the [2004](#), [2005](#), [2006](#) statements are available via CECC news updates). Contacts between the Tibetans and the Chinese government resumed in 2002.

Gyari's statement focuses principally on two issues: the administrative unity and level of autonomy that the Dalai Lama seeks for the Tibetan areas of China. Gyari rejected Chinese government accusations that the Dalai Lama intends to "split the motherland" (see, e.g., TAR government Chairman Jampa Phuntsog's [remarks](#) in a March 14, 2006, Xinhua article). "Tibetans are not asking for the separation of Tibet from China," Gyari's statement said, and "[h]aving the Tibetan people under a single administrative entity should not be seen as an effort to create a 'greater' Tibet, nor is it a cover for a separatist plot." Tibetans "yearn to be under one administrative entity so that their way of life, tradition, and religion can be more effectively and peacefully maintained," he said, and pointed out that the Chinese government "has redrawn internal boundaries when it suited its needs."

Like many Tibetans, Gyari refers to all of the territory in China in which Tibetans live as "Tibet." Referring to that area, he said, "[I]t is a reality that the landmass inhabited by Tibetans constitutes roughly one-fourth the territory of [China]." A People's Daily Web page states that the [area of China](#) is 9.6 million square kilometers; the Tibetan government-in-exile Web site asserts that the [area of Tibet](#) is 2.5 million square kilometers. Unifying all Tibetan areas into a single administrative entity would affect the Tibet Autonomous Region (TAR), all or most of Qinghai province, approximately half of Sichuan province, and parts of Gansu and Yunnan provinces, according to a [map of Tibet](#) available on the International Campaign for Tibet (ICT) Web site that shows provincial boundaries as dashed lines. Gyari also serves as the ICT Executive Chairman. A [map of Tibet](#) available on the Tibetan government-in-exile Web site includes more territory along the northern Tibetan border than the ICT map.

The Chinese government has established 13 areas of Tibetan autonomy at county-level or higher that are contiguous and have a total area of approximately 2.24 million square kilometers. Chinese officials only refer to the provincial-level TAR, the largest (1.2 million square kilometers) of the 13 Tibetan autonomous areas, as "Tibet." The other Tibetan autonomous areas are located in Qinghai, Gansu, Sichuan, and Yunnan provinces. The National People's Congress (NPC) establishes areas of regional ethnic autonomy under the authority of Article 4 and Chapter III, Section 6, of the [Constitution](#), and governments of ethnic autonomous areas are subject to the [Regional Ethnic Autonomy Law](#). (For more information about the Tibetan areas of China, see endnotes [3](#) and [14](#) in Section VIII, [Tibet](#), of the [CECC 2006 Annual Report](#).)

Gyari's statement also discusses the level of autonomy that the Dalai Lama seeks in order to protect "the Tibetan identity, culture, religion, and way of life." "[W]e have not proposed specific labels for how Tibetan areas would be designated, such as a special administrative region," Gyari said, "Nor have we specifically proposed formulas that ask for higher or lower levels of autonomy than Hong Kong and Macao." Article 31 of the Constitution authorizes the NPC to create special administrative regions, such as Hong Kong and Macao, that have systems of government established "in light of specific conditions." The Chinese government provides a lower level of autonomy to the residents of Tibetan autonomous areas under the REAL, as well as to residents of other ethnic autonomous areas, than it provides to Hong Kong and Macao. (For more information about regional ethnic autonomy, see "[Special Focus for 2005: China's Minorities and Government Implementation of the Regional Ethnic Autonomy Law](#)," in Section III, Monitoring Compliance With Human Rights, of the 2005 CECC Annual Report.)

Gyari acknowledged that differences between the Tibetans and Chinese officials are "seemingly insurmountable," but he

asserted in the statement that the Dalai Lama's "unambiguous commitment to the integrity and sovereignty of [China]" should encourage Chinese leaders to accept "the aspirations of the Tibetans to survive as a distinct people." The Chinese government's distrust of the Dalai Lama, he said, is "one of the most critical obstacles" that Tibetans face in the dialogue process. Gyari pointed out that the Dalai Lama's offer to visit China on a religious pilgrimage is facing "considerable opposition from Tibetans, both inside and outside Tibet," but he said the Dalai Lama believes that such a visit would help both sides to find common ground and build trust.

Qin Gang, the Ministry of Foreign Affairs (MFA) Spokesman, responded to a question about Gyari's statements at the Brookings Institution during a December 7 scheduled press conference, according to a December 8 MFA [transcript](#). "The person you mentioned and the group he represents have long been in exile and engaged in the activities aimed at splitting the motherland and undermining national unity," Qin stated. He repeated the Chinese government position that the Dalai Lama and his representatives should "genuinely renounce their proposition for Tibet independence and completely stop all the activities in an attempt to split the motherland."

The [CECC 2006 Annual Report](#) recommended that "the President and the Congress should continue to urge the Chinese government to invite the Dalai Lama to visit China so that he can see for himself the changes and developments in China, and so that he can seek to build trust through direct contact with the Chinese leadership." See "[The Status of Discussion Between China and the Dalai Lama](#)" in Section VIII, Tibet, of the CECC 2006 Annual Report, and in Section VI, [Tibet](#), of the [CECC 2005 Annual Report](#) for more information.

Government Issues New Coal Mine Provisions as Mining Fatalities Increase

China's State Administration of Work Safety (SAWS) and Ministry of Supervision jointly issued [interim provisions](#) on November 22 that aim to increase accountability for coal mine accidents. Under the new provisions, government officials and personnel in state-owned enterprises will be subject to penalties including warnings, demotions, and dismissal for violations of coal mine safety practices. The violations include failing to correct hidden dangers that result in an accident; concealing, misreporting, or providing a delayed report of an accident; and allowing mines with revoked licenses to continue operations. The provisions provide for legal prosecution where authorities suspect officials or personnel of engaging in criminal behavior. The provisions accompany other recent legal guidance also aimed at addressing coal mine and workplace safety:

- [Urgent Circular Regarding the Work of Safety Management in the Supply and Usage of Electricity in Coal Mining Enterprises](#), issued by the State Electricity Regulatory Commission, SAWS, and the State Administration of Coal Mine Safety (SACMS) on December 1, 2006
- [Urgent Circular Regarding the Strict Examination of Coal Mine Production Capacity Review Results to Restrain Excess Production](#), issued by the State Development and Reform Commission, SAWS, and SACMS on November 28, 2006
- [Circular Regarding Controlling Major Gas Accidents in Key State-Owned Coal Mines](#), issued by SAWS and SACMS on November 23, 2006
- [Circular Regarding Reviewing Coal Mine Production Capacity](#), issued by SACMS on November 2, 2006
- [Circular Regarding Supervising and Assessing the Launch of Coal Mine Rectification and Closure Work](#), issued by SAWS on October 28, 2006
- [Decision Regarding Amending Articles 68 and 158 of the "Rules on Coal Mine Safety"](#), issued by SAWS on October 25, 2006
- [Detailed Rules on Revising Safety Production Metrics](#), issued by SAWS on October 20, 2006
- [Guiding Opinion on the Establishment of a National Safety Production Emergency Response Platform System](#), issued by SAWS on October 4, 2006
- [Opinion Regarding Vigorously Promoting the Area of Safety Production Responsibility Insurance and Safety Production Safeguard Systems](#), issued by SAWS and the State Insurance Regulatory Commission on September 27, 2006
- [Guidelines for Enterprises to Develop Emergency Response Plans for Workplace Accidents](#), issued by SAWS on September 20, 2006

The government issued the November interim provisions as death rates from coal mine accidents increased in October and November. The State Administration of Coal Mine Safety reported that November's death toll from coal mine accidents rose 21.7 percent over October's figure, according to a Xinhua [article](#) posted December 5 on Oilnews. Eight accidents with more than 10 fatalities occurred during November, including three which resulted in more than 30 deaths and five accidents that took place in unauthorized mines, according to the article. In October, coal mine accident fatalities rose by 44.4 percent over the previous month, according to a November 23 China Daily [article](#) posted on the China Internet Information Center.

A series of court sentences in November punished officials and personnel for their involvement in mine accidents. Authorities removed officials from their Communist Party and government posts in Lingshi county and Taiyuan city, Shanxi province, in connection with November mine accidents that led to 55 deaths, according to a November 24 Reuters [report](#). Courts in Shaanxi province and the Xinjiang Uighur Autonomous Region (XUAR) handed down prison sentences on November 29 to seven coal mine heads found responsible for mine accidents resulting in 249 deaths in Shaanxi and the

XUAR in 2004 and 2005, according to a November 30 China Daily Report (available via [Open Source Center](#)). The sentences ranged from three years to six years.

Authorities also have carried out mine closures. The Heilongjiang government permanently closed the Yuanhua mine in Jixi city, Heilongjiang province, where an explosion on November 25 claimed at least 21 lives, according to a November 27 Beijing News [article](#). According to the November 30 China Daily report, SAWS said that the government will close 2,652 small mines with yearly output under 30,000 tons in 2006, and that China will close 2,209 more mines in 2007. SACMS commissioner Zhao Tiechui said that the government will allow no more than 100 miners per shift to work underground in state-owned mines, according to the report.

According to the December 5 Xinhua report, there were 4,236 coal mine accident fatalities during the first 11 months of 2006, representing the lowest figure in three years. Nonetheless, the current year's fatalities reflect continued widespread problems of labor safety in China's large coal mining sector. As noted in the CECC 2006 Annual Report, press reports suggest that China's coal mines are among the world's deadliest. Chinese officials have ordered the closing of dangerous mines, most of which are small and privately run, in an attempt to control the number of accidents, but pervasive official corruption impedes implementation of such coal mine safety measures. Local officials often receive income from mines, and therefore are reluctant to enforce safety measures that will affect production. The November 28 urgent circular on production capacity (cited above) aims to address fraudulent reporting on production capacity, especially among small mines trying to evade closure.

For more information, see "Coal Mine Safety" in Section V(c), Protection of Internationally Recognized Labor Rights, in the CECC 2006 [Annual Report](#).

Beijing PSB Officials Hold AIDS Activist Wan Yanhai, Cancel AIDS Conference

Beijing authorities released Wan Yanhai, founder of the HIV/AIDS advocacy group the Beijing Zhiaixing Information and Counseling Center (Zhiaixing), [formerly called](#) the Aizhixing Institute of Health Education, on the morning of November 27 after having held him for three nights without charge, according to a November 27 Associated Press [article](#) (via the International Herald Tribune) and a December 1 Amnesty International [public statement](#). According to a November 27 Chinese Human Rights Defenders (CRD) [report](#) and a November 26 Washington Post [article](#), security officers who carried no identification but claimed to be from the Beijing Public Security Bureau came to Zhiaixing's offices on the morning of November 24 and asked to see Wan. Wan subsequently called Zhiaixing staff into the room where he was being questioned and, in the presence of the security officers, told his staff to cancel the "Blood Safety, AIDS, and Legal Human Rights" conference. The officers then took Wan away. The conference was scheduled to be held from November 25 to November 30 in advance of World AIDS Day on December 1.

This was the second incident of Chinese government harassment of AIDS activists in recent months. On July 18, officials from Ningling county, Henan province, held Li Xige and seven other women in Beijing, according to the June-August [China Human Rights Briefing](#), published by CRD. The officials then forced the women to return to Ningling, where they were questioned. The women had traveled to Beijing to petition the Ministry of Health regarding their demands for compensation from the Ningling government, in connection with their having been infected with HIV from blood transfusions. Authorities released five of the women on July 20, but charged Li and two other women with "gathering people to assault a state organ," a crime under Article 290 of the [Criminal Law](#). Authorities released the other two women on bail for medical reasons on July 27 and August 2, and released Li on August 11. Amnesty International reports that after Li's release, she has been subjected to police surveillance and restrictions in movement and communication with the media. While traveling to Beijing to attend the Zhiaixing-sponsored conference, she was held on November 21 at the Beijing railway station by Ningling officials and was sent home the following day.

As the Congressional-Executive Commission on China (CECC) noted in its [2006 Annual Report](#), China's central government continues to take steps to prevent and control the spread of HIV/AIDS. For example, the State Council [issued Regulations on AIDS Prevention and Control](#) in January 2006 that intended to address the dominant modes of HIV/AIDS transmission in China: intravenous drug use and sexual contact. At the same time Beijing authorities were harassing Wan Yanhai, state-run media outlets, including [Xinhua](#), the [Guangming Daily](#), and the [People's Daily](#), (all in Chinese) were publicizing the government's efforts in AIDS prevention and treatment.

Repeated government custody of AIDS activists such as Wan, Li, and [Hu Jia](#) demonstrate that the government's recognition of the need to address the threat of HIV/AIDS is often outweighed by its desire to maintain control over civil society groups and halt the emergence of independent organizations. This is also not the first time the Chinese government has interfered with, and harassed participants of, international conferences. In May 2005, Chinese government authorities [abruptly canceled a planned international academic conference](#) on constitutionalism and democracy that was jointly organized by Fordham University and the China University of Politics and Law. In June 2005, security officers in Beijing [detained the executive director of a respected U.S. human rights NGO](#) after she attended a seminar associated with the EU-China bilateral human rights dialogue.

For more information on HIV/AIDS in China, see the CECC's October 2003 roundtable, [China's Mounting HIV/AIDS Crisis: How Should the United States Respond?](#)

Nuns and Alleged Assailants Reach Out-of-Court Settlement in Xi'an Beating Case

A group of 16 registered Catholic nuns in Xi'an city, Shaanxi province, reached an out-of-court settlement in a civil case against 9 men who allegedly assaulted the nuns in November 2005 while they occupied former Church property, according to November 10, 2006, reports by [AsiaNews](#) and the [Union of Catholic Asian News](#) (UCAN, via the Indian Catholic).

The nine defendants, who included the owner of the company that purchased the former Church property from the local government and eight of his employees, testified before a Xi'an court on October 17 that they saw the nuns being beaten but did not take part in the beating. Fourteen of the nuns also testified before the court. The judge suggested that the parties negotiate an out-of-court settlement, and negotiations ensued. On October 27, the nuns agreed to accept a payment of 260,000 yuan (US\$ 31,000) in compensation for their medical expenses; this is in addition to 90,000 yuan paid to the nuns in 2005. A criminal case against the defendants appears to be pending; the Xi'an court refused the defendants' request to dismiss criminal charges against them, according to the UCAN account. As of November 7, the nine defendants remained in detention.

The case resulted from the nuns having been beaten in a November 23, 2005, [incident](#) in Xi'an. The nuns were attacked as they staged a sit-in to prevent the demolition of buildings on the former Catholic Church property, which they sought to recover. The local government confiscated the property during the 1960s, and refused to return it, in apparent violation of a 1980 [State Council directive](#) (unofficial translation available on the Web site of the Holy Spirit Study Centre) that such properties be returned to the Church. Similar incidents in which officials or unidentified assailants beat registered Catholic nuns or priests who disputed the sale or rental of former Church property occurred in [Tongyuan](#) village, Shaanxi province, in November 2005, and in [Tianjin](#) municipality in December 2005. [Forum 18](#) and the [Holy Spirit Study Centre](#) have reported that some local governments in China not only have failed to return former Church properties but also have sold or rented the properties to third parties and retained the proceeds.

For more information on religious freedom for Catholics in China, see the [CECC 2006 Annual Report](#), Section V(d).

Senior Official Acknowledges Role of Police Abuses in Wrongful Convictions

Wang Zhenchuan, Deputy Procurator-General of the Supreme People's Procuratorate (SPP), acknowledged at a November 18 seminar in Sanya city, Hainan province, that almost all wrongful convictions in China involve police abuses during the investigation stage, according to a [Legal Daily report](#) (in Chinese) on the next day. Wang called on local procuratorates to strengthen their supervision over criminal investigations, and to bring into line police who extract confessions through torture or who illegally gather evidence. In addition, he urged procuratorates to deal strictly with cases involving the use of torture to extract a confession, the use of force to gather evidence, or an illegal search, among other criminal offenses. Wang was addressing a group of about 30 officials and legal scholars attending a seminar on illegal evidence gathering and wrongful conviction, according to a November 19 China News Net [report](#) (in Chinese).

Official Chinese statistics show that only about 30 people are wrongfully convicted in China each year due to police abuses, but Wang said that the real number could be higher, according to a November 20 Xinhua [report](#). In 2005 and 2006, domestic news media brought attention to a series of cases in which the defendant had been wrongfully convicted of a crime, and suggested that torture may have been used to coerce a confession from the defendants in those cases. A January 5, 2006, China Youth Daily [article](#) (in Chinese) described two of the cases, involving the wrongful convictions of [Nie Shubin](#), in Hebei province, and [She Xianglin](#), in Hubei province. The article counted these cases among China's 10 most influential legal cases in 2005. Following his [visit to China in late 2005](#), Manfred Nowak, UN Special Rapporteur on Torture, [reported](#) that Chinese rules of evidence "create incentives for interrogators to obtain confessions through torture."

Official remarks by Wang and others dismiss Nowak's claim that torture remains widespread throughout China. Nowak's report noted that police and other public security officers make up 47 percent of perpetrators of alleged torture in China. By contrast, Wang's comments indicated that illegal evidence gathering exists to "varying degrees" and that wrongful convictions occur "from time to time," but the comments did not specifically address occurrences of torture, according to a November 20 Xinhua [report](#) (in Chinese). During a September 19, 2006, meeting before the UN Human Rights Council in Geneva, Nowak reaffirmed his finding that torture is widely used in China, according to a UN [press release](#) on the same day. At the same meeting, Ambassador Sha Zukang, the Chinese Permanent Representative to the UN Office at Geneva, maintained that cases of torture are "isolated" occurrences. Sha emphasized that the Chinese government "had implemented measures, such as investigating criminal cases of abuse of power," and that "recent changes in the law would allow cases of forced confession to be fully investigated."

Since 2001, the Chinese government has initiated several reform measures that aim to further prevent and punish torture and other abuses by officials. Xinhua reported that according to He Jiahong, head of the Evidence Law Research Institute at Renmin University, the Legislative Affairs Commission of the National People's Congress Standing Committee established in

2001 a working group of scholars to look into the issue of illegally obtained evidence. A 2001 SPP [circular](#) acknowledged that confessions coerced under torture have led to several miscarriages of justice, and identified the following four areas for reform:

- A change in the philosophy of the police, to prevent a presumption of guilt or the desire to strike against crime from overshadowing the protection of suspects' rights.
- Enhanced supervision by the procuratorate, and coordination with police investigators to highlight the significance of procedural rules and evidence in approving an arrest or indictment.
- Elimination of procuratorial reliance on illegally obtained evidence to prove a case.
- Prosecution of any official who has relied on torture to coerce a confession.

In addition, SPP [provisions](#) that went into effect on July 26 [detail the criteria for prosecuting official abuses of power](#), including the use of torture to coerce a confession.

Official statements suggest that a gap still remains between legislative reforms and their impact in practice. Chen Lianfu, head of the SPP office that investigates official misconduct and rights infringement, said on November 19 that systemic reforms still need to be implemented, including through better supervision by the procuratorate and prosecution of police misconduct, according to a Xinhua [report](#) (in Chinese) on the same day. Neither Chen nor Wang provided statistics detailing how many officials have been prosecuted for torture in recent years. Nowak's December 2, 2005, [press release](#) noted that the SPP itself investigated 82 cases of official misconduct in all of China in 2004, and that 33 law enforcement officials were prosecuted for torture during the first nine months of 2005. Nowak concluded, however, that "these official figures are clearly the tip of the iceberg in a country the size of China and demonstrate that most victims and their families are reluctant to file complaints for fear of reprisal or lack of confidence that their complaints will be addressed effectively."

For additional information on torture, illegal evidence gathering, and wrongful convictions, see "Torture and Abuse in Custody" and "Fairness of Criminal Trials and Appeals," in Section V(b) of the CECC's [2006 Annual Report](#).

Party Uses Journalists, Artists, Academics To Promote "Harmonious Society"

The Communist Party Central Committee issued the [Resolution on Major Issues Regarding the Building of a Harmonious Socialist Society](#) (Resolution) on October 11, calling on news publications, radio, film, television, literature, the arts, and the social sciences to "insist on the correct orientation" and "sing the main theme" as part of the Party's campaign to build a "harmonious society." The phrase "sing the main theme" [has been defined by one Party official](#) as meaning to "carry forward a nationalist spirit whose core is patriotism" and "carry forward collectivist and socialist ideology and allow it to become the main stream of modern times." The Resolution, issued at the end of the Sixth Plenum of the Party's 16th Central Committee, also recommends increased control over the Internet to ensure that it is used in a "civilized" manner, saying "the Internet should be made an important battlefield for promoting a harmonious society."

The Resolution includes additional instructions on how journalists, writers, artists, and academics should construct a "healthy ideological public opinion atmosphere" for purposes of building the "harmonious society." News media should "publicize what the Party stands for," "provide guidance on social hot-button issues," and succeed at [public opinion supervision](#). Academics in the areas of philosophy and social sciences should focus their research on "major and practical issues" and "insist on using Marxism as their guide." Writers and artists should produce upbeat works that develop the "true, good, and beautiful" and "enrich the cultural life of the masses." The Resolution also provides that the [Sweep Away Pornography and Strike Down Illegal Publications](#) campaign should continue in full force.

Underscoring the Party's concern about rising social unrest, the 2006 plenum was devoted to the theme of building a "harmonious society," and was the first ever to focus on "social development matters other than political and economic affairs," according to an October 11 Xinhua [article](#). The Party first pledged to build a more "harmonious society" in 2002, according to the Xinhua article, but the sixth plenum has now increased the campaign's importance. According to the Central Committee's [communiqué](#) issued on October 11 in connection with the plenum, "there exist many contradictions and problems which affect social harmony," and the plenum decided to "put the building of the harmonious socialist society to a more prominent place."

Following the meeting, top Chinese officials began urging the news media to "study, publicize, and carry out" the spirit of the sixth plenum. According to an October 25 Xinhua [report](#) (in Chinese), Li Changchun, a Politburo member, said at an October 24 meeting of the All-China Journalists' Association that:

- The news media's "foremost duty is to study, publicize, and carry out" the spirit of the sixth plenum and the important statements of President Hu Jintao to unify the thoughts of the whole party and the whole nation.
- News media should "vigorously publicize the latest achievements of Chinese Marxism and guarantee the basic ideological foundation for building a harmonious socialist society."

President Hu Jintao also spoke at the meeting, saying he hoped the government-sponsored association would insist on the "correct political direction," according to the Xinhua report. At a November 8 awards ceremony for journalists marking Journalists' Day, Liu Yunshan, a Party Central Committee member who also serves as secretary of the Secretariat and

Director of the Central Propaganda Department, told journalists that it was their "primary duty to study, publicize, and carry out" the spirit of the sixth plenum, according to a November 9 Guangming Daily [report](#) (in Chinese). In addition, Liu told journalists that:

- "To become an outstanding journalist, one should insist on the Party's principles and insist on the correct guidance of public opinion... [these] are the basic demands of the Party on journalists."
- News media must be "loyal to the Party's news work and protect the interests of the Party and the people."
- News media should "meticulously spread the theme of building a harmonious society, disseminate harmonious ideals, build a harmonious culture, publicize examples of harmony, and cultivate harmonious customs."

Two weeks after the sixth plenum session ended, Cai Wu, Director of the State Council Information Office, told an audience in the United States that China believes that the Chinese media should be less confrontational than in the West, according to an October 26 Associated Press [article](#) (reprinted in the International Herald Tribune). "In China, we think that the relationship between the media, the society, and the government should be characterized by coordination and cooperation, rather than by confrontation," Cai said on October 25. He added that "in some Western countries, good news is not news, bad news or strange news is news."

In a speech before the Chinese Writers' Association on November 10, President Hu reiterated the sixth plenum's themes to writers and artists, telling them that building a harmonious culture is their "dignified mission" and that the Party hopes that they will "each make their own contribution to building a socialist harmonious society," according to a [transcript](#) of the speech posted on the Guangming Daily Web site on November 11.

The Chinese government already requires journalists to follow Party ideologies and act in the interest of the Party. These requirements are intended to protect the ideological and political dominance of the Party. For example, the [Interim Provisions on the Administration of Those Employed as News Reporters and Editors](#) issued jointly by the General Administration of Press and Publications, the Central Propaganda Department and the State Administration of Radio, Film and Television in 2005, provides that reporters and editors must be "guided by Marxism, Leninism, Mao Zedong Thought, Deng Xiaoping Theory, and the important ideology of the 'Three Represents,' support the leadership of the Chinese Communist Party, and support the socialist system" and "protect the interest of the Party and the government."

For additional information on how the Chinese government and the Communist Party control and censor the press to impose ideological uniformity, see [Section V\(a\), "Special Focus for 2006: Freedom of Expression,"](#) in the [CECC's 2006 Annual Report](#).

ACFTU Measures Promote Migrant Benefits, Also Aim To Curb Independent Groups

Sun Chunlan, Vice Chair and First Secretary of the All-China Federation of Trade Unions (ACFTU), called for the national union federation to continue efforts to protect the legal rights of migrant workers at an October 15 meeting on migrant labor, according to an October 16 Legal Daily [report](#) (in Chinese). Citing the Sixth Plenum mandate to establish a socialist harmonious society, Sun told unions in the federation to focus on five facets of migrant worker protection: participating in the formulation and implementation of laws and policies to protect migrant worker rights; solving acute problems such as wage distribution, labor safety, and social security, while implementing a three-year plan to have enterprises sign contracts with migrant workers; assisting migrant workers with their work and problems in their livelihood; promoting education and training among migrant workers; and bringing more migrant worker groups into ACFTU branches. Sun also cited recent accomplishments in furthering protections for migrants, noting that the ACFTU brought more than 6.5 million migrant workers into its membership during the year. She said that 9.18 million migrant workers in enterprises with ACFTU branches have signed labor contracts, a figure that represents 39.5 percent of ACFTU migrant worker members.

While ACFTU efforts have promoted benefits for migrant workers, its status as a Party-led mass organization prevents migrant workers from exercising internationally recognized labor rights, including the right to organize independent unions. As the only legally recognized labor federation in China, the ACFTU controls all local union branches and aligns worker and union activity with government and Party policy. (For more information, see [Section V\(c\), Protection of Internationally Recognized Labor Rights,](#) in the [CECC 2006 Annual Report](#).)

Sun's call for ACFTU branches to incorporate migrant worker groups also reflects Party opposition to independent labor movements that would threaten state power or challenge the ACFTU's authority. On November 9, Shenzhen authorities closed the office of the Shenzhen Migrant Workers Association (SMWA) after it organized a campaign urging the government to eliminate labor dispute arbitration fees, according to a November 15 Radio Free Asia [report](#) (in Chinese) and November 16 China Labour Bulletin (CLB) [article](#). After searching the association's office, as well as the offices of other organizations participating in the campaign, authorities ordered the SMWA to stop operations because it was an unregistered organization that engaged in "illegal activities." The SMWA primarily provided legal services and social activities for migrant workers but also took part in a campaign in March that gathered signatures from 10,000 migrant workers to protest high labor dispute arbitration fees. The SMWA spearheaded work in early November to expand the signature campaign to gather 1 million signatures, according to the CLB article.

For more information on conditions for migrant workers and labor rights in China, see related CECC analyses on [ACFTU](#)

efforts to establish branches in companies owned by foreign enterprises, insurance for work-related injuries, and unpaid migrant wage claims, as well as Section V(c), on labor rights, in the CECC 2006 Annual Report.

Official Repression of House Church Members Continues in Xinjiang

Official government repression of Protestant house church members in the Xinjiang Uighur Autonomous Region (XUAR) continued in October and November, with three reported incidences of house church members being taken into custody, according to the China Aid Association (CAA), a U.S. NGO that monitors religious freedom in China.

- Officials detained house church member Tian Maishi on October 18 in Urumqi city, XUAR, holding her for at least three weeks, according to a November 15 CAA [report](#). Officials accused Tian of "illegal evangelism" and "use of superstition to cheat another person" but the report did not specify whether authorities were citing specific violations of religious regulations or criminal law when detaining Tian. The government employs various [legal and extralegal methods](#) to penalize religious adherents engaged in religious practices that it deems illegitimate.
- Officials in Yili city, XUAR, raided a house where unregistered Protestants had gathered for the blessing of a home on October 20, taking more than 10 house church members into custody, along with 3 Singaporean nationals, according to an October 31 CAA [report](#). Officials released most of those in custody, including the Singaporeans, on October 21, but five of the house church members remained in detention as of October 31.
- Authorities in Urumqi city, XUAR raided a Bible training program on October 26, taking into custody and questioning 34 house church members and an American pastor, according to a CAA [report](#) dated the same day. A CAA [report](#) on October 27 said that officials beat 1 house church member, but released the 34 they took into custody after 12 hours of questioning, and kept the American pastor under surveillance in a hotel. Officials also detained several house church members again for questioning on October 27, and asked others to appear for additional questioning.

For more information on Protestants in China, see the [CECC 2006 Annual Report](#), Section V(d).

Shandong Court Sentences Internet Essayist Li Jianping to Two Years' Imprisonment

The intermediate people's court in Zibo city, Shandong province, sentenced Internet essayist Li Jianping on October 25 to two years' imprisonment and two years' deprivation of political rights for "inciting subversion of state power," according to the [court judgment](#). Such acts are crimes under Article 105, Paragraph 2 of the [Criminal Law](#). The court found that Li had "incited subversion of state power" by posting essays on overseas Web sites that "harmed the people's democratic dictatorship and socialist system of China" and "provoked feelings of hostility and hatred" toward the Chinese government. The court judgment neither described how the essays accomplished these acts nor cited any specific passages that it considered to be harmful or provocative. An October 26 Committee to Protect Journalists (CPJ) [report](#) quoted Li's wife as saying he planned to appeal the verdict.

The court found that Li had written 18 essays from 2003 to May 2005 and had posted them on such foreign Web sites as Democracy Forum, ChinaEWeekly, and Epoch Times. The judgment included a list of the essays, with titles such as "'Face' for the Communist Party is Paramount," "Who Should be Thanked for Corrupt Officials," "Discussion and Judgment Regarding Hu Jintao's Current Situation," and "Suzhou's Myth of Incorruptibility is Already Shattered; How Long Can Shanghai Endure?"

Li joins a growing list of writers and journalists that Chinese authorities have arrested or sentenced in recent months for posting essays critical of the Chinese government or the Communist Party on overseas Web sites such as the ones cited in Li's case. These individuals include:

- [Chen Shuqing](#): Internet essayist and China Democracy Party (CDP) member arrested in October on the charge of "inciting subversion of state power."
- [Zhang Jianhong](#): writer arrested in October on the charge of "inciting subversion of state power."
- [Guo Qizhen](#): Internet essayist sentenced to four years in October for "inciting subversion of state power."
- [Li Yuanlong](#): journalist sentenced to two years in July for "inciting subversion of state power."
- [Yang Tianshui](#): freelance writer and CDP member sentenced to 12 years in May for "subversion of state power."

The CPJ condemned Li's sentence in its October 26 report. "Li Jianping has already been jailed for too long on the gossamer reasoning that his online criticism of national leaders constitutes a threat to the state," said CPJ's Executive Director Joel Simon. Both the [International Covenant on Civil and Political Rights](#), which China has signed and committed to ratifying, and the [Universal Declaration of Human Rights](#) (UDHR) guarantee to everyone the right to freedom of expression "regardless of frontiers" and through any media. Both allow for restrictions only if they are prescribed by law and necessary to protect the rights of others, morals, public order, or public health. The UN Working Group on Arbitrary Detention (UNWGAD), in a report on its 2004 mission to China (available on the UNWGAD's [Country Visits](#) Web page) criticized the Chinese government for using "vague, imprecise or sweeping" criminal law provisions such as "subverting state power" to punish the peaceful

expression of the rights guaranteed in the UDHR.

Authorities violated Chinese law by preventing Li from meeting with his defense counsel until just before his trial began. According to an October 26 Boxun [report](#) (in Chinese), Li did not meet with his lawyer until more than 10 months after he was detained and just prior to the trial's first hearing, which took place on April 12. The Boxun report said that Li had made several attempts before then to set up a meeting with his lawyer. Under Article 96 of the [Criminal Procedure Law](#) (CPL), Li's lawyer should have been able to meet with him after the first interrogation by police or starting from the first day of his formal detention on May 27, 2005, [unless officials determined that the case involved state secrets](#). Media reports about the case do not indicate that officials thought the case involved "state secrets." The Boxun report also said that Li was not allowed to see his family during his detention.

Officials relied on a number of procedural postponements to extend the investigation and trial phases of Li's case:

- Public security officials formally arrested him on June 30, 2005, and submitted his case to the procuratorate on August 30.
- The procuratorate sent the case back to the public security bureau on October 12 and again on December 6 for supplementary investigations because of insufficient evidence.
- The public security bureau submitted the case again on January 26, 2006, and the procuratorate formally [indicted](#) Li on March 7.
- After agreeing to hear the case on March 13, the Zibo Intermediate People's Court requested and received from the Shandong High People's Court a one-month extension on the time period to hear and decide the case "because of the case's complexity," according to the judgment. Under Article 1 of [Several Provisions on Strictly Enforcing a System of Case Hearing Time Limits](#) (Provisions), issued by the Supreme People's Court (SPC) in 2000 and Article 168 of the CPL, a court must conduct a hearing within two and a half months of agreeing to hear a case and pronounce a judgment by the end of that same time period, in public prosecutions that the investigative agencies have characterized as "complex."
- The procuratorate requested to postpone the trial for supplementary investigations on May 27 and August 11 and the court agreed to these requests, according to the judgment. Article 9(3) of the Provisions provides that these periods of supplementary investigation do not count towards the two-and-a-half month deadline for hearing the case. Under Article 168 of the CPL, a supplementary investigation does not count towards, but instead restarts the clock, for deciding the case. Neither Article 165 of the CPL nor Item 4 of a 2003 [circular](#) jointly issued by the SPC, Supreme People's Procuratorate, and Ministry of Public Security place a limit on the number of times a procuratorate may request to postpone the trial for supplementary investigation. By contrast, Article 140 of the CPL and Item 4 of the circular place a two-time limit on the ability of public security bureaus to make similar requests for supplementary investigation. If abused, this gap in procedural restraints at the trial level could allow a procuratorate to indefinitely postpone the hearing and judgment in a case indefinitely while the defendant remained in detention.

According to a November 4 Reporters Without Borders (RSF) [report](#), Li took part in the 1989 Tiananmen democracy protests as one of the founders of the Independent Federation of Shanghai Universities. The RSF report also said that Li used to run a medical equipment supply business.

Medical Practitioners and Ministry of Health Cooperate To Regulate Organ Harvesting

About 600 Chinese surgeons joined top health officials on November 13 for a national summit to discuss regulation of human organ transplants, according to a November 16 [report](#) (subscription required) in the South China Morning Post (SCMP). All medical institutions that perform organ transplants in China sent representatives to attend the National Summit of Clinical Application and Management of Human Organ Transplantation, which took place in Guangzhou city, Guangdong province, according to a November 16 China Daily [report](#). At the summit's conclusion on November 14, the surgeons issued a [declaration](#) to affirm that they would not engage in the purchase or sale of organs, and that they would obtain written consent before removing organs from a donor's body. Medical institutions and personnel affiliated with the People's Liberation Army (PLA) and People's Armed Police (PAP) also affirmed their commitment to the declaration. The release of the declaration came one month after China News Net [reported](#) (in Chinese) on October 11 that Huang Jiefu, Vice Minister of Health, had called on the medical industry to "establish standards for self-regulation, and cooperate to assist health administration agencies" in the area of organ transplant management.

The China Daily report notes that Chinese health officials acknowledge the shortage of human organ donations in China, and that this shortage has reportedly "spurred illegal trading of organs." A November 14 Xinhua [report](#) quotes Huang as saying that each year, approximately 1.5 million people in China need an organ transplant, but only 10,000 receive one. The China Daily report quotes Huang as saying that, "Apart from a small portion of traffic victims, most of the organs from cadavers are from executed prisoners." At a July 2005 conference, Huang became the first senior official to disclose that the majority of organs used in transplants in China come from executed prisoners, according to a November 28, 2005, [article](#) (in Chinese) in Caijing Magazine. Qin Gang, spokesman for the Ministry of Foreign Affairs (MFA), acknowledged during a September 28, 2006, [press conference](#) (in Chinese) that the organs of executed prisoners are used in transplants, but that such use is strictly regulated. Mao Qun'an, a spokesman for the Ministry of Health (MOH), criticized what he called

"irresponsible" news media reports about harvesting organs from executed prisoners, but conceded that "improper human organ transplants" have taken place in China due to poor government regulation, according to the China Daily. Medical institutions currently manage organ donations, allocations, and transplant operations in China. The SCMP reported in its November 16 piece that the PLA or PAP typically carries out executions of prisoners in China.

Medical institutions and personnel (including those from the PLA and PAP) pledged in their November 14 declaration to comply with requirements under existing Chinese law and [guiding principles](#) adopted by the World Health Organization (WHO) in 1987. Beginning on July 1, 2006, new MOH [provisions](#) banned the purchase and sale of organs, and provided prospective donors with the right to refuse donation. Neither these provisions nor the WHO guiding principles [provide specific guidance on organs harvested from executed prisoners](#). The new provisions leave intact [1984 provisions](#) regarding the use of corpses or organs from executed prisoners. Despite the official statements of Huang Jiefu, Qin Gang, and Mao Qun'an that organ donations must be accompanied by the written consent of the donor or donor's family members, the 1984 provisions say that a corpse or organ belonging to an executed prisoner may also be used if no one has retrieved the prisoner's corpse for burial. A November 28, 2005, [Caijing Magazine report](#) notes that the 1984 provisions are the only existing regulation on the issue of harvesting organs from executed prisoners. The report says: "[I]n several cases, local courts have sold organs from prisoners' cadavers without informing their families. Legal experts argue that the process is in dire need of more transparency and third-party oversight."

News media reports suggest that the impact of the new provisions remains to be seen, and that additional legislation to regulate human organ transplants continues to stall. In an October 24, 2006, [article](#), the SCMP cited unnamed organ transplant professionals as saying that the provisions that went into effect on July 1 have not had "any effective influence on field operations," and that one key reason is their failure to address the issue of the sources of human organs for transplant. SCMP reported that health officials currently are finishing new ethical guidelines for human organ transplantation, but that one gray area is the requirement of informed consent from executed prisoners. The SCMP quotes an unnamed source as saying that, "The guideline[s] will specifically not mention the use of executed prisoners' organs, even though it's the main source of organs in China." The guidelines reportedly form the basis for China's first Regulations on Human Organ Transplants, which were still in draft form when the MFA's Qin Gang made his statement on September 28. A November 27 [Guangming Daily article](#) (in Chinese) cited to Wang Jianrong, Vice Director of the MOH Committee on Clinical Application of Human Organ Transplantation and MOH Policies and Regulations Department, as saying that the Regulations have now been submitted to the relevant agencies under the State Council for review. A June 16, 2005, [Southern Daily report](#) (in Chinese) and June 30, 2006, [Beijing Review report](#) noted that since 1996, over 100 members of the Chinese People's Political Consultative Conference (CPPCC) have raised the need for legislation on organ donations. According to the Beijing Review, "The appeal for the legislation has been repeated at the National People's Congress and CPPCC annual sessions."

For additional information on the "Harvesting of Organs From Executed Prisoners," see Section V(b) of the CECC's [2006 Annual Report](#).

Local Authorities Interfere With Rights To Vote and Stand for Election

Local authorities continue to interfere with citizens' rights to vote and stand for election in the 2006-2007 cycle of county and township local people's congress (LPC) elections. Officials [have harassed and taken into custody](#) independent candidates and their supporters who threaten Communist Party control over the process and candidates.

- On July 26, authorities took into custody democracy activist Yao Lifa and five other independent LPC candidates after they met in Xiantao city, Hubei province, to discuss their election campaigns. [Unidentified assailants beat Yao](#) several times in 2005 while he was educating villagers on the election process. On November 7, 2006, the eve of the current cycle of LPC elections in Qianjiang, public security officials took Yao into custody as he was on his way to campaign for votes, according to a Radio Free Asia (RFA) [report](#) (in Chinese) on the same day. According to a November 13 RFA [report](#) (in Chinese), Yao believes that security officials summoned him for questioning in part to influence voters against him. Security officials have also harassed volunteers such as Lu Banglie who campaigned on Yao's behalf, according to November 6 RFA [report](#) (in Chinese).
- After Zuo Xiaohuan, a professor at Leshan Teachers' College in Sichuan province, announced on July 30 his decision to seek election to the Leshan city LPC, authorities at the college threatened to dismiss Zuo unless he withdrew his bid, according to a September 27 Network of Chinese Human Rights Defenders (CRD) [report](#) (in Chinese).
- Radio Free Asia (RFA) [reported](#) (in Chinese) on September 13 that independent candidate Wen Yan (whose pen name is Sun Bu'er) withdrew from the Jiangnan district LPC election in Wuhan city, Hubei, earlier that day, after unidentified assailants beat Wen and his mother on September 12. On the day before the beating, a Wuhan city public security official instructed Wen via telephone to withdraw from the election in order to avoid being beaten, according to a September 12 RFA [report](#) (in Chinese).

- On September 17, the eve of the LPC elections in the Wuchang district of Wuhan, public security officials took into custody independent candidate Yan Yuxiang, according to a September 20 RFA [report](#) (in Chinese). RFA also reported that during the same week, officials sought out for questioning independent candidate Xiao Shuixiang. After officials threatened Xiao, he withdrew his bid and did not cast a vote in the election.
- On September 25, public security officials took into custody Cai Aimin, an independent LPC candidate in Zhongyuan district, Zhengzhou city, Henan province, while he was distributing campaign leaflets, according to the September 27 CRD report.
- According to a November 7 Voice of America (VOA) [report](#) (in Chinese), unidentified assailants have beaten Lu Banglie, an [LPC representative](#) running for reelection in Zhijiang city, Hubei, twice during this election cycle. Lu endured beatings in 2003, while involved in recalling an allegedly corrupt leader in his village, and in [October 2005](#) for his role in the [Taishi village recall campaign](#). Lu told VOA that he is followed day and night and that officials have been sent to Zhijiang to instruct voters not to vote for Lu.
- According to a November 8 VOA [report](#) (in Chinese), Beijing lawyer Teng Biao said that more than 20 independent LPC candidates are running for election in Beijing, but that the Party still selects the vast majority of candidates. Teng has decided to boycott the elections due to Party control over the election process and government harassment of independent candidates.

Authorities have also engaged in corruption and fraud to interfere with LPC elections. On September 18, the head of the Huaqiao District Public Security Bureau (PSB) in Wuhan ordered three police officers to beat Wang Guoqiang, an officer in the bureau's communications department, after Wang reported to authorities an illegal mobile ballot box in the district LPC election, according to an October 13 RFA [report](#) (in Chinese). According to RFA, the PSB head who ordered the beating was also a district LPC candidate backed by local authorities. A [1995 amendment](#) to Article 34 of the [Electoral Law of the National People's Congress and Local People's Congress](#) (Electoral Law) provides for the use of mobile ballot boxes to make voting more accessible to citizens with little or no mobility, according to a July 25 National People's Congress (NPC) Standing Committee General Office Information Bureau [statement](#) (in Chinese). The statement says that there have been many problems in China associated with the use of mobile ballot boxes, including instances of election personnel secretly filling out ballots. Other problems with mobile ballot boxes that have contributed to election fraud in China include overusage, arbitrary usage, and the lack of supervision over personnel managing the boxes, according to an October 1 [report](#) (in Chinese) on the China Elections and Governance Web site, a division of the [Carter Center's China Elections Project](#). Official misuse of mobile ballot boxes is punishable under Article 52 of the Electoral Law, which provides for both administrative or criminal sanctions against those who use illegal means to disrupt election proceedings or interfere with election results, including through the "forgery of electoral documents, falsification of vote tallies or other illegal acts."

During the July 1, 2006, to December 31, 2007, election period, 900 million county election voters and 600 million township election voters will elect more than 2 million LPC delegates, according to NPC statistics cited in an October 24 Xinhua [report](#). Official Chinese harassment and custody of candidates violates Article 34 of the [Chinese Constitution](#) and Article 25 of the [International Covenant on Civil and Political Rights](#), which protect citizens' rights to vote and stand for election. In addition, Article 256 of the [Criminal Law](#) provides for the punishment of whoever "disrupts elections or obstructs the electorate and deputies from freely exercising their right to vote and to stand for election by such means as violence, threat, deception, bribery, falsification of electoral documents, or false report of ballots." Part II, Item 7 of the [Supreme People's Procuratorate Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Criminal Cases](#) requires that procuratorates investigate and prosecute for criminal activity officials who engage in such actions.

According to Liu Qing, the former president of Human Rights in China (HRIC), independent candidates play an important role in challenging Party control over elections. In an [article](#) (in Chinese) published in the September 2006 issue of *Humanity and Human Rights*, a monthly HRIC publication, Liu said that although many independent candidates may not be elected in this election cycle, they play a significant role in serving as forerunners for civil rights in Chinese society.

For more information on [Local People's Congresses](#) in China, see Section V(d), on [Democratic Governance and Legislative Reform](#), in the CECC's [2005 Annual Report](#) and Section VII(b), on "Institutions of Democratic Governance and Legislative Reform," in the CECC's [2006 Annual Report](#).

Rebiya Kadeer's Sons Receive Prison Sentence, Fines, for Alleged Economic Crimes

The Tianshan District People's Court in Urumqi, capital of the Xinjiang Uighur Autonomous Region (XUAR), imposed a prison sentence and fines on one son of exiled Uighur activist Rebiya Kadeer and levied fines on another son on November 27, according to a November 27 Xinhua [report](#) (via People's Daily) and a November 27 [press release](#) from the Uyghur Human Rights Project (UHRP). The court sentenced Alim Abdurehim (Abdureyim) to seven years in prison and fined him 500,000 yuan (US\$62,500) for evading taxes in the amount of 208,430 yuan (US\$26,000). The court imposed a 100,000 yuan (US\$12,500) fine on Qahar (Kahar) Abdurehim for evading taxes worth almost 2.5 million yuan (US\$312,500). The tax evasion charges stem from the brothers' involvement in two businesses previously run by Kadeer. The court levied a 15.3 million

yuan (US\$1.9 million) fine on the business for which Alim served as legal representative, and a 7.44 million yuan (US \$931,000) fine on the business Qahar operated on Alim's behalf. The court tried the pair on October 27 in a four-hour closed trial, according to an October 29 Agence France-Presse [article](#) (via The China Post) and the UHRP press release. The brothers had legal counsel, but their lawyers reportedly did not dispute the state's charges, according to UHRP.

Authorities initially [held Alim in custody in April](#) and informed him that he was under suspicion for evading taxes. Authorities [held Alim in custody again on May 29](#) (initially reported as May 30), along with his brother Ablikim and sister Roshengul, and later placed Alim and Ablikim in criminal detention and Roshengul under house arrest. On June 13, authorities took Qahar into custody and [charged him with tax evasion, Alim with tax evasion and splittism, and Ablikim with subversion of state power](#). Alim confessed to the charges against him on or around July 1, after being tortured, according to a July 6 UHRP [press release](#). According to the November 27 UHRP press release, authorities formally indicted Qahar and Alim with tax evasion and Ablikim with subversion of state power on July 14. The Xinhua report did not include any information on Ablikim's case, but UHRP reported that sources saw Ablikim on November 26 being carried on a stretcher out of the Tianshan district detention center. UHRP reported that authorities released Roshengul from house arrest after the trial.

The cases against Alim, Qahar, and Ablikim [reflect a pattern of harassment and abuse](#) against Kadeer's family in the XUAR that started after Kadeer's [release from prison](#) in March 2005 and subsequent relocation to the United States. Kadeer has since advocated on behalf of the Uighur community, most recently in her capacity as the president of two overseas Uighur organizations, the Uyghur American Association and the World Uyghur Congress (WUC). Kadeer, who reported that Chinese authorities threatened repercussions against her family members and business interests if she discussed Uighur human rights issues in exile, described the cases against her sons as a "vendetta" against her, according to the November 27 UHRP report. Sources had informed her that authorities would offer leniency to her children if she refrained from participating in the November 26 WUC election, according to UHRP.

For more information on conditions in the XUAR, see "[Rights Violations in Xinjiang](#)" in section III(a), "[China's Minorities and Government Implementation of the Regional Ethnic Autonomy Law](#)," in the CECC 2005 [Annual Report](#), and "Religious Freedom for China's Muslims" in section V(d), "Freedom of Religion," in the CECC 2006 [Annual Report](#).

Wenzhou City Issues New Domestic Violence Provisions

[Provisions on Preventing and Stopping Domestic Violence](#) (the provisions) took effect on November 15, 2006, in Wenzhou city, Zhejiang province, according to a November 9 Xinhua [article](#). The provisions charge local government and social organizations with implementing specific measures to prevent domestic violence. Article 23 of the provisions mandates that public security agencies should quickly respond to domestic violence cases; Article 30 directs local civil affairs bureaus to run shelters to house victims temporarily; and Articles 28 and 29 charge judicial administration agencies and legal aid organizations with helping victims who require legal assistance but cannot afford it. Articles 35 through 37 of the provisions mandate that officials responsible for stopping domestic violence should be punished when they fail to handle the case in a timely manner. Article 26 requires medical facilities to keep adequate records that may be used as evidence in a domestic violence case, and Article 23 requires the same of public security agencies.

Approximately 30 percent of the 270 million Chinese families surveyed in a 2004 All-China Women's Federation survey reported the occurrence of some form of domestic violence, according to a December 17, 2005, People's Daily [article](#) (in Chinese). The [Marriage Law](#), [Criminal Law](#), [Law on the Protection of the Rights and Interests of Women](#), and [Public Security Administration Punishment Law](#) all prohibit domestic violence. A 2001 Supreme People's Court [judicial interpretation](#) defines domestic violence as "beating, binding, mutilating, forcibly restricting the personal liberty of, or using other means that result in definite physical, spiritual, or other harm to family members." This definition, however, does not explicitly refer to other forms of abuse, such as rape or sexual violence, that were included in the UN Fourth World Conference on Women's [Platform for Action](#). The World Conference was held in Beijing in 1995.

Article 260 of the Criminal Law classifies domestic violence as a crime, but provides that courts may only accept domestic violence cases under special procedures for "private prosecution" of criminal cases. Under Articles 88 and 170 of the [Criminal Procedure Law](#), a victim of domestic violence may initiate a private prosecution and bypass law enforcement agencies to bring a domestic violence case directly before a court for resolution. Because of the potential of intimidation from the abuser and the difficulty of gathering evidence on their own, however, many victims cannot prosecute successfully, according to a November 24, 2005, Legal Daily [article](#) (in Chinese). Many victims also sue with the sole aim of "educating" their abuser and therefore ultimately drop the charges, according to the Legal Daily article.

Some local regulations address the problems victims face in domestic violence lawsuits. To help victims gather evidence of the crime, [Shanxi](#), [Qinghai](#), [Henan](#), and [Hainan](#) provinces, [Inner Mongolia](#) Autonomous Region, and now Wenzhou city have domestic violence provisions mandating that judicial evaluation agencies should provide an expert evaluation to victims who request it. Except for Henan, these local regulations indicate that this work should be performed at reduced fees for victims with economic hardships. In addition to the five provincial-level areas noted above, four other provincial-level governments, ([Heilongjiang](#), [Liaoning](#), and [Hubei](#) provinces, and [Chongqing municipality](#)) have detailed domestic violence regulations enacted since 2003 that include some or all of the following provisions: government-run shelters, timely police response,

protection of a victim's right to privacy, legal aid for victims, and punishment under the relevant criminal and administrative provisions for officials whose neglect of their duties in domestic violence cases leads to severe injury. Moreover, [Wuhan city](#), in Hubei province, has adopted detailed regulations to address problems in prosecution of domestic violence cases. In addition to mandating a swift police response, the Wuhan regulations instruct police to separate husband and wife during questioning, and mandate that the local women's federation and public security bureaus establish a joint center to direct anti-domestic violence efforts.

Officials Extend Tibetan's Sentence for Shouting Pro-Dalai Lama Slogans in Prison

The Chinese government has extended the sentence of Jigme Gyatso, a former Gaden Monastery monk who operated a restaurant in Lhasa city, capital of the Tibet Autonomous Region (TAR), according to a [report](#) in the Fall 2006 issue of Dialogue, a newsletter published by The Dui Hua Foundation. The Dialogue report describes the conviction and imprisonment of Jigme Gyatso as one of several "high-profile cases of concern to the international community."

Officials detained Jigme Gyatso at his restaurant in March 1996, and a court sentenced him in November 1996 to 15 years' imprisonment for counterrevolution. The 1997 revision to the [Criminal Law](#) eliminated this offense. The Dialogue article reports that Jigme Gyatso received a three-year extension in May 2004 for "inciting splittism" after he shouted pro-Dalai Lama slogans in TAR Prison (Drapchi). According to a March 2006 [report](#) by Manfred Nowak, UN Special Rapporteur on Torture, describing his late-2005 mission to China, Jigme Gyatso told Nowak during an interview conducted at [Qushui Prison](#), opened near Lhasa in 2005, that the sentence extension was for two years. Information is not available that would resolve the apparent contradiction, but the Dialogue article notes that several Chinese government responses mention a three-year extension and provide a new release date in March 2014.

Prison authorities have held Jigme Gyatso in solitary confinement "in particularly restricted conditions" following his meeting with Nowak, and subjected him to "severe beatings," according to a December 1 International Campaign for Tibet (ICT) [report](#). The report does not describe the source of the information, nor provide detail about the alleged heightened confinement restrictions and beatings. Nowak's report states that TAR Prison staff kicked, beat, and shocked Jigme Gyatso with electric batons after he shouted, "Long live the Dalai Lama," during the 2004 incident, and that the beating continued until the "Chief of Police" came to the scene and stopped it. Jigme Gyatso was "apparently hospitalized" earlier in 2006 for several weeks and is currently unable to walk normally due to a leg injury, according to the ICT report, which does not state the cause of the injury.

Chinese officials found Jigme Gyatso guilty of counterrevolution for "planning to found an illegal organization and [seeking] to divide the country and damage its unity," according to a December 2004 UN Working Group on Arbitrary Detention (UNWGAD) [report](#). A UNWGAD [report](#) issued in November 2000 referred to Jigme Gyatso's involvement in establishing the organization, "Association of Tibetan Freedom Movement," and said that "there is nothing to indicate that the 'illegal organization' . . . ever advocated violence, war, national, racial, or religious hatred. . . ." According to the November 2000 UNWGAD report, Jigme Gyatso was "merely exercising the right to freedom of peaceful assembly with others in order to express opinions. . . ."

A translation of the official Lhasa Intermediate People's Court 1996 judgment, obtained by ICT, is available in the ICT report. In addition to Jigme Gyatso, the 1996 judgment sentenced four Tibetan members of the pro-independence group, Dargye, Lobsang Oezer, Tenzin Trinley (Tseten), and Yeshe Jamyang, to five years' imprisonment on counterrevolution charges.

See "[Tibetan Culture and Human Rights](#)" in Section VIII, "[Tibet](#)," of the [CECC 2006 Annual Report](#), and the [CECC Political Prisoner Database](#) for more information.

Official Information Confirms Sentence for Tibetan Nun Who Put Up Posters

The Gannan Intermediate People's Court in Gansu province sentenced Choekyi Drolma, a Buddhist nun, to three years' imprisonment in December 2005 for "inciting splittism," according to official Chinese information that has recently become available. She was among five Tibetan monks and nuns detained in 2005 in Xiahe (Sangchu), in Gannan (Kanlho) Tibetan Autonomous Prefecture (TAP) in Gansu. [Public security officials detained](#) Choekyi Drolma, along with nuns Tamdrin Tsomo and Yonten Drolma of Gedun Tengyeling Nunnery, and monks Dargyal Gyatso and Jamyang Samdrub of Labrang Tashikhyil Monastery, on May 22, 2005, on suspicion that they circulated and displayed letter-sized posters in Xiahe and other locations that were critical of the Chinese government, according to NGO and news media reports. A January 30, 2006, [report](#) posted on the Web site of the London-based Free Tibet Campaign (FTC) provided the most detailed information on the detention and sentencing of Choekyi Drolma and her associates based on unofficial sources.

The official information mentions only Choekyi Drolma, but the Gannan court probably tried and sentenced the five monks and nuns together, since they were accused of acting together to distribute and display the posters. Exactly what the posters said is not clear, as unofficial descriptions of them vary. A July 2005 Tibetan Centre for Human Rights and Democracy [report](#) said that the posters called for "freedom in Tibet." A Radio Free Asia [report](#) in December 2005 said that at least one of the posters called on the Chinese government to start a dialogue with the Dalai Lama. According to a

February 2006 Reuters [report](#) (reprinted on the Web site of Phayul), the posters said that China should not host the Olympics until the Tibet question is peacefully resolved.

Chinese authorities use the charges of "splittism" and "inciting splittism" to target and punish peaceful activities by ethnic Tibetans, such as displaying protest posters. Inciting splittism is a crime under Article 103 of the [Criminal Law](#). (See Section V(b), on "Rights of Criminal Suspects and Defendants, Political Crimes," of the [CECC 2006 Annual Report](#).) Choekyi Drolma is imprisoned in the Gansu provincial Women's Prison and is due for release in May 2008, according to the official information. The other nuns likely are imprisoned in the same prison. Information about the monks' place of imprisonment is not available, but it is likely that they are held in a provincial-level prison near the capital, Lanzhou. Tamdrin Tsono and Dargyal Gyatso are also serving 3-year sentences, according to FTC, and Yonten Drolma and Jamyang Samdrub were sentenced to 18 months' imprisonment. Their sentences expire on November 21, 2006.

Tibetan monks and nuns constitute about 70 percent of the 107 currently detained or imprisoned Tibetan political prisoners, according to information available in the [CECC Political Prisoner Database](#). The actual number of Tibetan political prisoners is likely to be higher. Reports of Tibetan political imprisonment often do not reach monitoring groups until at least one or two years after the detentions occur, and some reports do not include the names of the detainees. See Section V(d), on [Freedom of Religion](#), "[Religious Freedom for Tibetan Buddhists](#)," and Section VIII, on [Tibet](#), "[Tibetan Culture and Human Rights](#)," of the [CECC 2006 Annual Report](#) for more information.

Anhui Requires Journalists to Write "Positive" Reports for Promotion

The Anhui provincial government issued rules in October requiring journalists and editors based in Anhui, as a condition for promotion, to produce "positive" reports about the province that are carried by "major central news media." Southern Weekend, a Guangdong-based weekly run by one of China's most progressive and reform-oriented newspaper publishers, publicized the existence of the rules in an October 26 [report](#) (via Sina.com) on the barriers to advancement that the rules pose for a local Anhui journalist. According to the report, the Anhui provincial Human Affairs Department and "other relevant departments" issued the [Conditions on Standards for Evaluating the Professional Skill Qualifications of Journalists](#) (Conditions) on October 13. The paper reported that the Conditions were forwarded to the municipal governments of 17 cities in Anhui. The Hefei City Radio and Television Bureau [posted](#) the Conditions on its Web site on October 31.

The Conditions apply to journalists and editors working for news organizations based in Anhui, as well as to journalists and editors at other news organizations who have engaged in news gathering or editing in Anhui for at least one year. Article 12 (1)(4) provides that, to be promoted to the position of "high-level" journalist or editor, the highest level as indicated in the Conditions, candidates must have produced at least three "positive propaganda reports" each year about Anhui province. The pieces must have been published or broadcast by a "major central news media" organization, which is defined to include [People's Daily](#), [Guangming Daily](#), [Economic Daily](#), [China Central Television](#), or [China National Radio](#). Candidates who produce pieces exclusively for publication by such organizations are subject to an even higher standard: they must produce at least 30 "positive" pieces a year. In each case, the piece must be at least 500 characters in print or 20 seconds in length if broadcast. Article 14(1) of the Conditions sets forth the standards for promotion to the next lower rank of journalist and editor, with paragraph (4) requiring either one "positive" report per year, or, in the case of journalists and editors whose stories are published exclusively by "major central news media" organizations, 20 "positive" reports per year. Article 24 provides that if a candidate's report contains a "serious error in orientation," the candidate's application for promotion may be rejected and he or she may not apply for a promotion for two years.

The Conditions do not define the term "positive propaganda report." An unnamed official at the Anhui Human Affairs Department cited "the region's achievements, activities, or well-known citizens" as examples of appropriate subject matter for "positive" reports, according to the Southern Weekend report. "Don't always find problems to criticize. Problems objectively exist, but if you are always focusing on them, that will have a negative impact," the official said. The official also said that the emphasis on "positive" reporting fulfills the Communist Party's calls to strengthen [guidance of public opinion](#).

The Conditions elicited a strong negative reaction, both from journalists interviewed in the Southern Weekend report, and editorials in domestic Chinese media issued after the report, including an October 27 Southern Metropolitan Daily [editorial](#), an October 27 [op-ed](#) posted on the People's Daily Web site, another October 27 [op-ed](#) posted on the People's Daily Web site, and an October 30 [op-ed](#) posted on the Jinrong Jie Web site. Commentators criticized the Conditions for discouraging critical reporting and noted a recent spate of cases involving official corruption in Anhui. Commentators also criticized the Conditions for not specifying what would constitute a "positive" report and for imposing conditions for advancement with which journalists would have difficulty complying and which are unrelated to the skills required of journalists.

A line of attack employed by some of the commentators was to criticize the Anhui officials for disobeying central government directives. Specifically, they argued that the Conditions run counter to the central government's [public opinion supervision](#) (yulun jiandu) initiative. While the commentators emphasized that the initiative empowered the media to supervise government officials, in practice the initiative allows China's state-run media only limited opportunities to engage in critical reporting. Such "public opinion supervision" must be done "[in a manner that benefits the Party's line, direction, and policies . . . and encourages the strengthening of the people's faith in the Party and the government.](#)" In addition, one

of the reasons for the initiative is that it allows central Party and government authorities to use journalists to investigate provincial and local officials, and designate stories they deem too critical or politically sensitive to be published in the media as internal intelligence reports to be forwarded to relevant officials. But like in Anhui, local officials have sought to curb even the limited critical reporting allowed as "public opinion supervision," and central Party officials have facilitated these efforts. In June 2005, the Party Central Committee [issued](#) a document limiting a phenomena called "extra-territorial reporting" whereby news media from one area are allowed to investigate local officials in another area even though the local media in that area are prevented from doing so. The document requires that local Party officials in the targeted area approve the "critical extra-territorial article" prior to publication. Examples of efforts by local officials to block critical reports include:

- In January 2006, Hunan provincial authorities [removed](#) a Xinhua article from local newspapers that listed Hunan at the top of a list of provinces cited for poor handling of unsafe mines.
- In July 2005, Nanjing Party propaganda officials [issued](#) a directive mandating that when journalists submit a critical investigative report to an editor, they must also submit a copy of the draft that has been signed by the subject of the article.
- In June 2005, local officials in Da Gang township [censored](#) a critical extra-territorial report published by the Southern Metropolitan Daily by removing the relevant pages from copies of the newspaper that were being distributed locally.
- In March 2005, Xinhua [reported](#) that authorities in Shanxi province unlawfully detained one of its reporters.

Authorities and representatives of the state-run media have pushed for more "positive" reporting. For example, in June 2005, Nan Zhenzhong, editor-in-chief of Xinhua, [said](#) that the news media should "increase the analysis and commendation of model good people and good deeds from all areas," and that 94.2 percent of Xinhua's public opinion supervision reports in the first quarter of 2005 were "positive" reports. In May 2005, a People's Daily editorial [called](#) for more "positive" and "constructive" reporting and less reporting on "exposés and scandals." More recently, the Party Central Committee at its sixth plenum in October [called](#) on journalists to tailor their reporting to help promote a "harmonious society." Cai Wu, Director of the State Council Information Office, [told](#) an audience in the United States two weeks after the plenum concluded that China believes that the Chinese news media should be less confrontational than in the West.

For more information regarding the Southern Weekend report and the subsequent editorials, click on link below.

Full Analysis >> <http://www.cecc.gov/pages/virtualAcad/newsletterListing.phpd?NLdate=20061208&show=ALL#id80818>

Five-Year Plan Calls for News Regulator To Maintain Status As News Provider

The [11th Five-Year Cultural Development Program](#) issued by the State Council on September 13, 2006, states that one of the Chinese government's goals is to ensure that the Xinhua News Agency's news information products hold a "proportion of the domestic market." In addition to being China's largest news agency, Xinhua is a Chinese government bureau directly subordinate to the State Council and, pursuant to the [Decision of the State Council Establishing Administration Examination and Approval Matters That Must Remain Subject to Administrative Licensing](#), is the regulator of foreign news agencies providing financial information in China.

Xinhua's dual role as both a government regulator and market competitor has raised concerns regarding China's compliance with World Trade Organization (WTO) commitments and bilateral agreement obligations. When China acceded to the WTO in 2001, the Chinese government agreed in its Schedule of Specific Commitments on Services that it would allow foreign investment in the "Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services." On September 10, 2006, Xinhua [issued](#) the [Measures for Administering the Release of News and Information in China by Foreign News Agencies](#) (Measures), which prohibit foreign news agencies from distributing news and information in China without government permission, and require foreign news agencies to be licensed by Xinhua and to submit all articles to a Xinhua-approved agency for distribution.

In the November 10, 2001, [Report of the Working Party on the Accession of China](#), the Working Party also noted: "The representative of China confirmed that for the services included in China's Schedule of Specific Commitments, relevant regulatory authorities would be separate from, and not accountable to, any service suppliers they regulated, except for courier and railway transportation services." The Office of the U.S. Trade Representative (USTR) stated in its 2006 [National Trade Estimate](#), however, that the Chinese government has not established such an independent regulator, and Xinhua remains a "major market competitor" of foreign financial information service providers in China.

According to the American Chamber of Commerce's [2006 White Paper](#), foreign companies have complained that Xinhua has been using its regulatory authority to increase control over the distribution of content, and has been expanding the definition of a news agency so as to establish a monopoly on the dissemination of sports and financial news. The October 11 edition of [Inside US-China Trade](#) (subscription required) cited an unnamed USTR spokesperson as saying that "officials are exploring whether the new rule violates China's WTO commitments." That report also cited unnamed sources as saying that the Measures may also be in violation of a bilateral agreement between the United States and China under which China agreed that Xinhua would not act as a review board for foreign news.

In addition to ensuring Xinhua retains market share, the 11th Five-Year Cultural Development Program also stated that the government intends to increase its support for Party newspapers and periodicals, as well as "news agency, radio stations, television stations, major news Web sites, and current events periodicals." The program also calls for developing domestic media outlets into "famous brands" and ensuring they hold a "relatively strong influence on society," and remain a "principal force in public opinion." The program says that the Party's leadership of cultural work should increase, and that "relevant departments" should actively support and cooperate with Party committee propaganda departments. Finally, the program also provides guidelines for the content and manner of news reporting in China, including calls to:

- Increase the media's ability to guide public opinion capabilities, particularly on "social hot-button issues."
- Strengthen the appeal and infectiousness of news propaganda.
- Publicize what the Party stands for.
- Broaden the influence of positive propaganda.
- Increase propaganda reports on [important topics](#).

At the Party Central Committee's sixth plenum in October, the central committee [placed similar demands on the media](#), calling on them to build a "harmonious society" by "insisting on the correct orientation" of public opinion, "publicizing what the Party stands for" and providing guidance on "social hot-button issues."

Government Increases Controls Over Muslim Pilgrimages

Chinese Muslim pilgrims may now only receive hajj visas at the Saudi Embassy in Beijing and only if they are part of a Chinese government-sponsored trip, according to an announcement from the State Administration for Religious Affairs (SARA) reported on October 4 in [Ta Kung Pao](#) and October 12 on the SARA [Web site](#). The new measures were established in an agreement signed in May between the state-controlled Islamic Association of China (IAC) and the Saudi Ministry of Pilgrimage. SARA publicized the agreement after a group of Muslims from the Xinjiang Uighur Autonomous Region (XUAR) attempted to obtain Saudi visas via a third country in August and September. As part of the agreement, the IAC will organize a second overseas pilgrimage each year in addition to the main annual pilgrimage to Mecca. Despite existing legal regulations on pilgrimages and a general policy urging Chinese Muslims to travel only on officially sponsored trips, as late as January 2006 the government had indicated [some limited tolerance](#) for pilgrimages made outside official channels. The May 2006 agreement and announcement the same month that the IAC [would establish an office](#) to manage pilgrimages to Mecca indicate new efforts to strengthen government control over pilgrimages.

Some of the sources cited in an October 24 South China Morning Post [article](#) (subscription required) suggest that the change in policy is intended in particular to increase government control over Muslims from the XUAR. According to the article, XUAR pilgrims regularly have received visas to Saudi Arabia from Saudi consular officials in a third country. A spokesperson from the U.S.-based Uyghur American Association cited in the article suggested that the new policy may aim to limit the number of Uighur pilgrims or better supervise those who participate in the pilgrimage. A scholar from the Xinjiang Academy of Social Science noted that the Chinese government is concerned that independent pilgrims could make contact with terrorists, separatists, and religious extremists - groups the Chinese government labels as the "[three evil forces](#)." The government has [tightly controlled religious practice in the XUAR](#) as part of its campaign against the "three evil forces."

For more information on Islam in China, see "Religious Freedom for China's Muslims" in section V(d), "Freedom of Religion," in the CECC 2006 [Annual Report](#).

Beijing Drafts Mental Health Regulations in Preparation for Olympics

The Beijing Municipality Local People's Congress (LPC) on August 9 released [draft regulations](#) that would give public security officials the power to hospitalize mentally ill persons only if they pose a threat to public safety, life or property. The Draft Regulations on Mental Health also prohibit discrimination against mental health patients and their family members, and call for protections for mental health patients in the workplace. Officials have discussed the regulations as part of a legislative program to be passed in connection with the Beijing 2008 Olympic Games, according to a September 15 Beijing Morning News [report](#). The central government continues to consider the 17th draft of a national mental health law that was first introduced in 1985.

On their face the draft regulations appear to protect persons from arbitrarily being deemed mentally ill and forcibly hospitalized, a concern in this case because of the timing of the regulations, the Chinese government's past treatment of the mentally ill while bidding for the Olympics, and a history of officials detaining political activists in mental health facilities. In March 1993, as a part of the Chinese government's bid to host the 2000 Olympic Games, Beijing authorities removed homeless, indigent, and mentally ill people from the city before the arrival of an International Olympic Committee delegation, according to a 2002 Human Rights Watch [report](#).

Beijing's draft regulations stipulate that in order for public security officials to commit an individual to a mental health facility, his or her behavior must present a threat to "public safety, life or property" as diagnosed by at least two mental

health physicians. If doctors determine that the person does not need hospitalization, then he or she must be released and returned to his or her family or guardian. These provisions appear to be consistent with the provisions of the UN's 1991 [Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care](#) (1991 Principles) that allow for involuntary admission of a patient to a mental health facility if a qualified mental health practitioner thinks there is a serious likelihood of immediate or imminent harm to that person or other persons.

While the rules regarding the decision to commit an individual appear consistent with the 1991 Principles, the provisions that deal with the review of that decision contravene the 1991 Principles. The 1991 Principles provide that involuntary admission shall "initially be for a short period" pending review by a "judicial or other independent and impartial body" which shall conduct its review as soon as possible after the patient is admitted. The draft regulations do not provide for an independent and impartial review in a timely manner. Instead, Article 27 of the regulations provides that the medical treatment facility shall conduct the review, which it may take up to six months to complete.

The 1991 Principles provide that "a determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status." In the past, international human rights groups have documented the use of psychiatric treatment to persecute political activists in China, and expressed concern regarding the deprivation of liberty of mentally ill people. In its 2002 [report](#) on the use of political psychiatry in China, Human Rights Watch asserted that the involuntary confinement in mental hospitals of those the Chinese government regards as a "political threat" directly violates both the World Psychiatry Association's 1996 [Declaration of Madrid](#) and the 1991 Principles. The United Nations Working Group on Arbitrary Detention published a report (available on the UNWGAD's [Country Visits](#) Web page) following its September 2004 mission to China in which it found that, "the Chinese system of confinement of mentally ill persons in mental health facilities, which they are not allowed to leave, is to be considered a form of deprivation of liberty, since it lacks the necessary safeguards against arbitrariness and abuse."

The Commission has also documented the forced detention of political prisoners in hospitals for mentally ill criminal offenders. See the CECC's prior analysis in the cases of [Liu Xinjuan](#) and [Wang Wanxing](#).

For more on the Chinese government's record of forced psychiatric commitment see Section V(b) Rights of Criminal Suspects and Defendants, of the CECC's [2006 Annual Report](#).

GAPP Official Claims China's Publishing Regulations Fulfill WTO Commitments

Liu Binjie, a deputy director of the [General Administration of Press and Publication](#) (GAPP), told a reporter that the Chinese government has honored its World Trade Organization (WTO) commitments with respect to reforming and opening up its publishing sector, according to a September 19, 2006, [article](#) (in Chinese) posted on the State Intellectual Property Office Web site. Liu said that in compliance with its WTO obligations, the Chinese government has opened up both its retail and print production markets. Liu cited the following developments as evidence:

- Thirty-eight foreign-invested retail service enterprises have been approved, and 14 of these have rights to engage in wholesale distribution.
- Foreigners may invest in printing enterprises, with the exception that a Chinese party must be the controlling shareholder in all "publication printing enterprises." To date, the Chinese government has approved 2,000 Sino-foreign joint ventures and wholly foreign-owned printing enterprises, and some are very large in scope.

Liu said that, while China's policies do not permit foreign investment in "editorial" areas, cooperation on individual book projects is open to foreign participation. He also said that the areas of "book cooperative publishing" and "copyright trade" are completely open, and 51 newspaper and periodical Sino-foreign copyright cooperative ventures have been approved.

China's WTO Commitments on Foreign Access to China's Publishing Market

On July 6, 2005, the [Certain Opinions Regarding the Introduction of Foreign Investment into the Cultural Domain](#) (Certain Opinions), was jointly issued by the Ministry of Culture, State Administration for Radio, Film, and Television, GAPP, National Development and Reform Commission, and Ministry of Commerce. The Certain Opinions stated that "in order to safeguard the nation's cultural security," foreign investors are prohibited from "investing in businesses engaged in the publication, general distribution, or importation of books, newspapers, or periodicals." The distinction between "wholesaling" [pifa] and "general distribution" [zongfaxing] is unclear. The [Provisions on the Administration of the Publications Market](#) defines "general distribution" opaquely and circularly as "integrated publication by a publication general distribution work unit," while "wholesaling" is broadly defined as "engaging in sales of publications to other publications."

When China acceded to the WTO in 2001, the Chinese government agreed in its [Schedule of Specific Commitments on Services](#) that it would allow foreign investors to establish a commercial presence to engage in retailing services for books, magazines, and newspapers within one year of accession (except through chain stores), and to engage in wholesale trade services of books, magazines, and newspapers within three years of accession. Moreover, Article 5 of China's [Protocol of Accession](#) provides that "within three years after accession, all enterprises in China shall have the right to trade in all goods throughout the customs territory of China, except for those goods listed in Annex 2A which continue to be subject to state

trading in accordance with this Protocol." Books, newspapers, and periodicals are not listed in Annex 2A.

Government Restrictions on Foreign Access to China's Publishing Market

The government initially appeared willing to fulfill these commitments when it issued the [Measures on the Administration of Foreign-Invested Book, Newspaper, and Periodical Distribution Enterprises](#) on March 17, 2003, which granted foreign companies the rights to engage in limited wholesaling and retailing activities. These rights were reaffirmed in the [Measures on the Management of Foreign Investment in the Commercial Sector](#) issued on April 16, 2004.

More recently, however, Chinese authorities have enacted regulations that appear to restrict this right. In addition to the Certain Opinions, other examples include:

- [Measures on the Administration of the Subscription of Imported Publications](#), issued December 31, 2004: Only publication-importing businesses designated by the GAPP may engage in the newspaper and periodical import business.
- [Catalogue for the Guidance of Foreign-Investment Industries](#), issued November 30, 2004: Placed the periodical and wholesale and retail distribution of books, newspapers, and periodicals in the "restricted" category, and placed the publication, general distribution, and importation of books, newspapers, and periodicals in the "prohibited" category.

The Chinese government maintains that it may impose restrictions on the importation of books, newspapers, and periodicals based on the general exception for the protection of the public morals in Article XX of the General Agreement on Tariffs and Trade 1994. On [September 15](#) and [November 3](#), 2006, the United States submitted questions to China at the WTO's Committee on Market Access and Council for Trade in Goods, respectively, asking the Chinese delegation to explain the relevance of GATT Article XX and why the government's restrictions on the import books, newspapers, and periodicals is "necessary" within the meaning of Article XX.

The United States government and U.S. and international trade associations continue to complain that the Chinese government's regulation of foreign investment in publishing is opaque and may conflict with its WTO commitments. Examples include:

- [Written Comments Regarding Copyright Protection and Services/Market Access in China in Response to the Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments](#), submission by the International Intellectual Property Alliance (IIPA) to the Trade Policy Staff Committee, Office of the U.S. Trade Representative, September 21, 2006: "IIPA believes that China has failed to afford full trading rights to foreign entities as to books, newspapers and periodicals. . . . [C]ontinued severe restrictions on activities of paramount importance to U.S. publishers, such as printing (which is 'restricted'), and failure to define key activities which are prohibited, for example, 'master issuing' and 'producing' cast doubt on whether China is meeting its WTO obligations."
- [2005 Report to Congress on China's WTO Compliance](#), Office of the U.S. Trade Representative, December 11, 2005: "China has not yet implemented its trading rights commitments insofar as they relate to the importation of books, newspapers, and magazines. . . . China continues to wholly reserve the right to import books, newspapers, and magazines to state trading enterprises."
- [Moving Forward on Distribution](#), The US-China Business Council, September 2005: States that the Chinese government's implementation of its commitments on allowing wholesaling of printed matter are "unclear."

Local Officials' Dereliction of Duty Linked to Environmental Incidents

A senior State Environmental Protection Administration (SEPA) official said dereliction of duty by local officials in Gansu and Hunan provinces is to blame for two major environmental pollution incidents in August and September, according to a September 15 China Daily [article](#). Pollution from factories resulted in more than 250 children being hospitalized for lead poisoning in Gansu and the shutdown of a drinking water source used by 80,000 people in Hunan, according to news reports. Pan Yue, Deputy Director of SEPA, described both cases as "typical examples of pollution problems caused by a dereliction of duty of local governments and environment bureaus [*sic*]," according to the China Daily article.

The incidents test whether the Chinese government will enforce a recent commitment to administratively punish local officials for protecting polluters. After a series of pollution incidents and the finding that pollution increased in the first half of 2006, central government officials [announced](#) in September that they will "severely" punish local government officials for protecting polluting enterprises. According to the China Daily article, Pan emphasized that "[o]fficials must be held accountable," with those found guilty receiving "harsh administrative punishments."

The incidents also test whether procuratorate officials will abide by a recent law and file criminal cases against local officials who neglect their professional duties, thereby contributing to pollution incidents. The Supreme People's Procuratorate issued [Provisions on the Criteria for Filing Dereliction of Duty and Rights Infringement Criminal Cases](#) (Provisions), which [went into effect on July 26](#) and clarify [previous provisions from 1999](#) (in Chinese) regarding negligence in environmental supervision

and control, a crime under Article 408 of the [Criminal Law](#). Specifically, Section 1, Item 19, of the Provisions calls on local procuratorates to file a criminal prosecution against any official whose negligence causes a major environmental pollution incident, which brings about the following consequences, among others:

- I(19)(2): the "severe poisoning of 30 or more people;" and
- I(19)(7): the "severe pollution of the source of everyday drinking water, surface water, or underground water."

Thus far, authorities have issued administrative punishments for some officials in the Hunan incident and have begun an investigation of officials in Gansu, although the results are not yet known. With regards to the Gansu incident, Pan noted that "[t]he illegal pollutant discharge lasted for more than 10 years. The local government and environmental bureau definitely will not escape responsibility."

Pollution From Plant in Gansu Province Causes Lead Poisoning in Hundreds

Lead pollution from a lead smelting plant in Huixian county, Gansu province, resulted in more than 250 children being hospitalized and scores of children and adults being diagnosed as having excessive levels of lead or lead poisoning, according to a September 28 Xinhua [article](#) and a September 6 Associated Press (AP) [article](#) (via MSNBC.com). The lead poisoning was first detected when a five-year old boy was brought to a local hospital in April for unrelated reasons, according to the China Daily article. Further medical tests on August 18 led to the mass hospitalization, according to the September 28 Xinhua article and the September 6 AP article. As of October 9, 954 children had been found to have excessive levels of lead in their blood or to be suffering from lead poisoning and 43 adults had been found to be suffering from lead poisoning, according to an October 9 Xinhua [article](#) (via China Daily).

The plant responsible for the incident, Huixian County Non-Ferrous Metal Smelting Co., Ltd., had failed to undergo an Environmental Impact Assessment (EIA) after its upgrade in 2003, and its waste disposal equipment had failed to meet national emissions standards since it started production in 1996, according to a September 12 SEPA [press release](#) (in Chinese) and the China Daily article. In 2003, the plant released 201 tons of lead into the atmosphere, an amount more than 800 times the national standard, according to the China Daily article.

The Gansu provincial government sent a delegation to investigate possible misconduct on the part of the county government, according to a September 15 China Youth Daily [article](#) (in Chinese). So far there have been no reports on the progress of the investigation or whether any officials have been punished. Officials reportedly closed and demolished parts of the plant after the incident, according to the October 9 Xinhua article and an October 11 Wall Street Journal [article](#) (subscription required).

Local Officials Punished for Chemical Spill From Factories in Hunan Province

Authorities in the cities of Yueyang and Linxiang in Hunan province discovered a chemical spill on September 8 and cut off a drinking water source used by 80,000 residents for four days in response, according to a September 11 South China Morning Post (SCMP) [article](#) (subscription required) and a SEPA [press release](#) (in Chinese) from the same day. No injuries were reported, according to the September 11 SCMP article.

The two factories responsible for the spill, Haoyuan Chemical Company, Ltd. and Taolin Lead-Zinc Ore Chemical Plant, had been discharging waste water into the Xinqiang River that contained arsenide levels 10 times above the national standard for a year, according to the September 11 SEPA press release and the China Daily article. Officials allowed the factories to operate despite not passing any EIAs and despite not having any pollution-control facilities, according to an October 4 SCMP [article](#) (subscription required). In the case of the Haoyuan facility, the Linxiang municipal government designated it as a "key protected firm" and even helped it obtain a waste discharge license, according to an October 3 Xinhua [article](#) (in Chinese).

The Yueyang municipal Party committee and the Yueyang municipal government removed Chen Lin from his post as Director of Linxiang city's Environmental Protection Bureau (EPB) and found that Feng Haibo, Deputy Director of Linxiang's EPB had committed a "serious administrative offense," for their failure to adequately supervise the Haoyuan facility and for overstepping their authority in approving the waste discharge license, according to the October 3 Xinhua article. The Yueyang municipal Party committee and government also issued administrative warnings to five other municipal officials, including the acting Linxiang mayor, deputy mayor, and local Community Party secretary, for not adequately supervising the factory and giving it protected status, according to the October 3 Xinhua article. The same article reports that the municipal Party committee and government based their decision on the [Regulations of the CPC on Disciplinary Punishments](#) (in Chinese) and the [Provisional Regulation on Disciplining Dereliction of Duty in Environmental Protection Activity](#) (in Chinese). The article did not say whether procuratorate officials intend to pursue criminal prosecution of the officials involved, as mandated by the Provisions.

For a related report, see an earlier CECC analysis on a [factory that caused lead poisoning in children in October 2005](#). See Section V(f), on "The Environment," in the [CECC's 2006 Annual Report](#) for more information on the Chinese government's response to environmental degradation.

NPCSC, People's Bank of China Pass New Regulations on Money Laundering

The Standing Committee of the National People's Congress enacted a new [Anti-Money Laundering Law](#) (Law) on October 31, according to a [report](#) (in Chinese) on the People's Daily Web site dated the same day. The following day, Xinhua [reported](#) (via the People's Daily) that the People's Bank of China (PBOC) would issue regulations "as soon as possible" to enforce the Law, which will become effective on January 1, 2007. On November 14, Xinhua [reported](#) that the PBOC had issued two regulations that it described as "complements to the anti-money laundering law." The regulations, the [Provisions on Anti-Money Laundering for Financial Institutions](#) (Provisions) and the [Measures on the Administration of Reporting by Financial Institutions of Large Value and Suspicious Transactions](#) (Measures), will become effective on January 1 and March 1, 2007, respectively. The Law, Provisions, and Measures replace the [Rules on Anti-Money Laundering for Financial Institutions](#), [Measures on the Administration of Reporting of Large Value and Suspicious Foreign Currency Cash Transactions](#), and [Measures on the Administration of Reporting of Large Value and Suspicious Renminbi Transactions](#), which the PBOC promulgated in 2003.

China's state-run press reports indicate that some of the major reforms to be put in place by China's new anti-money laundering regulations include:

- Expanding the institutions subject to anti-money laundering monitoring and reporting requirements beyond banks to include securities companies, commodity brokerage companies, fund management companies, insurance companies, asset management companies, trust investment companies, vehicle financing companies, and currency brokerage companies (Law, Article 34).
- Imposing restrictions on the investigation of money laundering crimes to prevent government abuse, including requiring all investigations to be conducted by at least two people (Law, Article 23), and restricting how the government may use customer identity and transaction information obtained in accordance with the Law (Law, Article 5).
- Allowing municipal level government agencies to impose fines and recommend administrative punishments for financial institution personnel for violating the Law (Law, Articles 31 and 32). These provisions were added to the Law during its final review by the Standing Committee, according an October 28 [Guangming Daily report](#) (in Chinese).

In April 2005, a draft of the Law was submitted to the Standing Committee and the PBOC issued a series of draft regulations related to money laundering for public comment. At that time, several government officials [expressed concern](#) about how the proposed legislation handled the government's freezing of suspected money laundering accounts. Article 26 of the Law and Article 23 of the Provisions specify that suspect accounts may be frozen temporarily for a time not to exceed 48 hours. Within 48 hours of adopting temporary freezing measures, however, a financial institution must unfreeze an account unless the government notifies the institution to continue freezing the account. The new regulations, however, do not address other concerns raised during the drafting stage about either the conditions under which accounts could be frozen or what form of compensation should be given to enterprises whose accounts are frozen wrongfully.

Lang Sheng, Director of the Criminal Office of the NPC Standing Committee Legislative Affairs Commission, said in an October 31 Xinhua [interview](#) (in Chinese) that the Law and PBOC regulations are intended to "prevent money laundering, safeguard financial order, and restrain related crimes." He added that, pursuant to Chinese law, punishments for money laundering would be imposed pursuant to the Criminal Law, and that the [Sixth Amendment to the Criminal Law](#), which was passed on June 29, 2006, included additional anti-money laundering provisions. Article 191 was amended to provide for seven upstream crimes (also known as predicate offenses) with respect to money laundering such as drugs, organized crime, terrorism, smuggling, corruption, bribery, violations of financial administration order, and financial fraud. An amendment to Article 312, which covers concealment of stolen goods, now provides for criminal prosecution of anyone who knows that something is income or other products from criminal activity and conceals, transfers, purchases, or helps to sell or otherwise covers up such income or products.

Liu Liange, Director of the State Council's Anti-Money Laundering Bureau, was cited in a November 1, 2006, [People's Daily article](#) (in Chinese), as saying that Chinese authorities planned to undertake to join the [Financial Action Task Force](#) (FATF) in June 2007. The FATF is an inter-governmental body established by the G-7 nations in 1989 to develop and promote national and international policies to combat money laundering and terrorist financing. Articles 27-29 of the Law include provisions relating to international cooperation:

- China will develop international cooperation regarding anti-money laundering in accordance with international treaties that have been concluded or that China is a party to, and the principles of equality and reciprocity;
- The PBOC will represent China to coordinate anti-money laundering cooperation with foreign governments and relevant international organizations, and exchange relevant information and materials with foreign anti-money laundering agencies.
- Judicial agencies will assist in the prosecution of anti-money laundering crimes "in accordance with relevant legal provisions."

China became an observer to the FATF in January 2005, and Zhou Yong, with the Ministry of Justice Crime Prevention Institute, said in a November 1 [Shanghai Securities News report](#) (via the People's Daily Web site, in Chinese), that by

becoming an official member, the Chinese government can enjoy many advantages including participating in assembling lists of anti-money laundering "non-cooperative nations and regions," which would have a "big affect on their reputation." Zhou also said that as a full member, China would be able to "participate in the formulation of anti-money laundering international standards, and fully reflect China's interests and perspectives, enabling international policies to benefit China."

In an [interview](#) (in Chinese) published in the July 13 edition of Caijing Magazine, PBOC Anti-Money Laundering Bureau Director Ling Tao said that in recent years, graft, bribery, and corruption crimes have been consistently increasing, and one of the main reasons for this increase has been a failure to pursue the laundering of the monetary proceeds of these crimes. A November 1 China Economic News [report](#) (via Xinhua, in Chinese) also discussed the problem, and cited recent examples of officials laundering money gained through embezzlement, including the current prosecution of three former Bank of China branch managers in Kaiping, Guangdong province, who are accused of laundering US\$485 million.

The state-controlled Chinese press generally has praised the new regulations, but the Shanghai Securities News report cited an unnamed expert from a securities oversight institution engaged in anti-money laundering research as saying that more work remains to be done:

[C]urrently the securities market is relatively lacking in a reporting system for large and suspicious transactions, and as for securities companies, fund companies, or commodity companies, there currently remain no regulations regarding under what circumstances a transaction is large, under what circumstances it is suspicious, what is the reporting method, what content is included in the essential factors of a report, at what time and within what scope there should be a report. Therefore, after the "Anti-Money Laundering Law" is issued, the securities market must take the initiative to work in this area.

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