TAMING THE DRAGON: CAN LEGAL REFORM FOSTER RESPECT FOR HUMAN RIGHTS IN CHINA?

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TAMING THE DRAGON: CAN LEGAL REFORM FOSTER RESPECT FOR HUMAN RIGHTS IN CHINA?

THURSDAY, APRIL 11, 2002

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was convened, pursuant to notice, at 2:37 p.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (Chairman of the Commission) presiding.

Also present: Representatives Wolf, Pitts, Levin, and Kaptur; and D. Cameron Findlay, U.S. Department of Labor.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

The CHAIRMAN. The hearing will come to order.

I would like to welcome everyone to the second hearing of the Congressional-Executive Commission on China.

Today, we will continue to pursue the relationship between the rule of law and protection of human rights in China. At our next hearing in June, we will look at commercial rule of law and the WTO [World Trade Organization].

My opening statement is short. I will, when I am finished, turn to my co-chair, Congressman Doug Bereuter, who I assume will be here quite soon, before we hear from our witnesses, followed by questions.

In the Commission's work, I start from one fundamental assumption: That a modern, industrialized Nation must have a legal system that is clear, fair, consistent, impartial, and independent.

There can be no room for arbitrary decisions. The police and the courts must be held accountable for their actions. The law must determine when rights are granted and when rights may be taken away, not the arbitrary whims of administrative officials.

This is necessary in commercial law for routine business to proceed, and it is no less necessary in civil and criminal law.

China is a conundrum. Thirty years ago, Mao Zedong was the supreme leader of a totalitarian Marxist-Leninist system. Today, after two decades of reform, the portrait of Mao that hangs from Tiananmen Gate overlooks a vastly different China.

On the streets of Beijing, Shanghai, and other cities, one would be hard pressed to find any real evidence of Marx or of Lenin. Power in China has become much more diffuse. It is wielded by an

ever-increasing number of officials and bureaucrats within the Communist Party and the Central Government, as well as officials at the provincial and city level.

A significant part of the economy is now based on market principles. State-owned enterprises are shrinking rapidly. Some journalists challenge government-imposed restrictions on press freedom.

The practice of religion is spreading. Legal clinics teach ordinary citizens about some of their rights, albeit with strict boundaries. Nevertheless, despite these changes, Xiao Qiang, head of Human Rights in China, reminded us at an earlier hearing that the Chinese Government has become a system of rule by law rather than rule of law. That two-letter preposition, rule by law versus rule of law, makes all the difference.

Under rule by law, authorities manipulate the law to achieve their own ends. Laws are often used as a means of subjugation or repression. With rule of law, the law itself is the final word. Human rights can only be protected within a system of laws. Anything else is arbitrary.

The Commission is beginning to work on its first annual report due in October. The report will include recommendations about how we can help China respect rule of law, a necessary step in China's march to join the community of nations.

These hearings, along with the detailed roundtables being held by the staff, which I understand have been most productive, will provide significant input into that report.

Let me list several questions that I hope we can address today. We have a distinguished panel of witnesses to help us do that.

How does the criminal justice process work in China? How can we help improve it? Second, what is the current status of lawyers in China? To what degree can they challenge police and prosecutors and defend clients without fear of punishment or retribution? How can we help improve the situation for lawyers in China?

Third, is China a more rules-based system now than in the past? What are the trends? And fourth, can one differentiate between a rules-based commercial law system and a rules-based civil and criminal law system? These are the basic questions.

Today, we have three distinguished panelists, each either personally or through his institution has played an important role in trying to move the Chinese Government in the proper direction.

John Kamm is Executive Director of the Dui Hua Foundation. John, of course, is very well known to all of us and has made some stunning contributions in the release of political and religious prisoners in China.

Jonathan Hecht is Deputy Director and Senior Research Fellow of The China Law Center at Yale Law School. He has been on the cutting edge of assisting change in China's legal structure.

T. Kumar is Advocacy Director for Asia and Pacific for Amnesty International in Washington. Amnesty has brought worldwide attention to human rights issues throughout the world for decades.

We will give each of you 5 minutes for your opening statements, then members of the Commission will ask questions. I will recognize the members of the Commission in the order in which they arrived today.

So, Mr. Kamm, why do you not proceed?

[The prepared statement of Senator Baucus appears in the appendix.]

STATEMENT OF JOHN KAMM, EXECUTIVE DIRECTOR, THE DUI HUA FOUNDATION

Mr. KAMM. Thank you very much, Chairman Baucus and distinguished Members of the Congressional-Executive Commission on China.

I was one of the first people to call for the establishment of a Congressional-Executive body, modeled on Congress' Helsinki Commission, to investigate, document, and struggle against violations of human rights in China.

Now that this Commission is established, the time has come to fulfill the promise for which it was created. This Commission should make securing the release of political and religious detainees from Chinese prisons its highest priority, the measure against which it is judged. This work is not only about saving a few lives, though one should make no apology when such a result is achieved.

It is about bringing respect for human rights and rule of law to China. The dichotomy that some would draw between doing humanitarian work and doing human rights work is a false dichotomy.

Who are the people whose freedom we seek? They are labor organizers like Yao Fuxin, entrepreneurs like Rebiya Kadeer, clergy like Bishop Su Zhimin, journalists like Jiang Weiping, Tibetan activists like Ngawang Oezer, and democracy leaders like Xu Wenli. They are the people who will someday change China, but whose ability to do so now is constrained by their being locked away in Chinese prisons. Free them and change China.

There are thousands of individuals jailed for political and religious reasons whose names we do not know. My foundation searches the world for their names. We have found 2,000 of them in 3 years of research in libraries and book stores.

How is it possible that their names have been accessible to China's scholars and human rights activists for so many years and no one has bothered to look for them and write them down? This Commission should join the effort to find as many of their names as possible and present them to the Chinese authorities at every opportunity, remembering that the struggle of man against power is the struggle of memory against forgetting, and that truth crushed to earth will rise again.

Prisoners have rights. They are human beings. Getting the Chinese Government to respect their rights to freedom from torture, to medical care when they are ill, to the comfort of family visits, to due process in the hearing of appeals is fundamentally a struggle for human rights.

Using international standards and China's own laws to win freedom and better treatment for prisoners is fundamentally a struggle for rule of law. Arguing otherwise, denigrating prisoner work as something separate and less worthy than human rights work, or as some have argued, something that prolongs the life of the regime, making it easier for it to make arrests because they are able to

score a few PR points is dangerous sophistry and I urge you to reject it.

When we press for the release of political prisoners we send a strong message about our own priorities. This is a Nation built on the rights of the individual, not the rights of the collective. You cannot talk about human rights without talking about human beings.

The spectacle of legal experts engaged in a bilateral dialog in which cases of violations are not discussed is one that must be avoided at all costs. Open and frank discussions about violations of human rights, discussions that are based on full and accurate information on individual prisoners, must be a condition for holding bilateral human rights dialogs.

Assistant Secretary Lorne Craner, a distinguished member of this Commission, has taken this position and we should applaud him for it.

This Commission should become an arsenal of human rights, arming its members and your colleagues in Congress with lists of the names of people whose freedom and better treatment must be a principal goal of our country's human rights diplomacy.

I urge you to construct and post on your Web site the prisoner registry that your mandate calls for, and I urge you to do it without delay. The NGO [non-governmental organization] community is ready to help.

Let your calls for freedom ring in the corridors of power in Beijing and in the provinces. Let them ring from the mountains of Tibet to the oil fields of Heilongjiang, from the villages of Sichuan to the teaming metropolis of Shanghai.

Let those in prison for the simple expression of their beliefs hear freedom's song, and in that song, the voices of those who made this country a shining city on the hill, the hope of the world. You will then fulfill the promise of this Commission and do honor to your legacy as Americans.

Thank you very much, Chairman Baucus.

The CHAIRMAN. Do not let that red light stop you if you have more to say, John.

Mr. KAMM. That is my statement.

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

The CHAIRMAN. All right. Fine.

Next, Mr. Hecht.

STATEMENT OF JONATHAN HECHT, DEPUTY DIRECTOR, SENIOR RESEARCH FELLOW, THE CHINA LAW CENTER, YALE LAW SCHOOL

Mr. HECHT. Thank you, Senator Baucus and the other members of the Commission for inviting me to speak here today.

Law reform and human rights in China have been the focus of my work for the past 12 years as a foundation program officer, as an advisor to the U.N. High Commissioner for Human Rights, as a consultant to human rights groups here in the United States, and now as the deputy director of The China Law Center at Yale Law School.

Based on my experiences, I believe that sustained, targeted support for legal reform can play a useful—indeed, crucial—role in promoting human rights in China.

Enormous change has taken place in China in the last 20 years, including in the legal system. As a result of these changes, there are powerful forces at work in China for more openness and more respect for individual rights.

But I do not believe that progress is inevitable. We cannot depend on economic reform and trade to lead automatically to progress in human rights. It is, and will continue to be, a struggle. In my written statement, I have indicated where and how our support for legal reform can contribute to that struggle.

One of the main reasons why, after 12 years, I continue to work in this field, despite many frustrations and many disappointments, is I have enormous respect and admiration for Chinese legal reformers.

They work in a difficult, even risky, political environment. They must overcome uncongenial traditions. They are seeking to fashion practical reforms, even as the country goes through change at a mind-boggling pace.

Particularly given these difficult conditions, legal reformers in China have accomplished a great deal in a relatively short time. When I began making grants in China in 1990, human rights was a taboo topic.

The Communist Party dismissed human rights as the patented product of Western capitalist countries. In the years since, the combination of the efforts of reformers within China and criticism from abroad has led to the legitimation of human rights as a goal for China and its legal system, and, in 1997 and in 1998, to China's signature on the two major international human rights treaties. Now reformers within China are using those treaties as a yardstick to critique and to push for further reform.

Over the course of the 12 years that I have been working in this field, legal reform has also progressed to ever more fundamental issues. In the early days, legal reform meant getting laws on the books, much of it related to foreign investment and training a new generation of legal experts and professionals.

Now the focus of legal reform is increasingly on structural issues, on the institutions and procedures that make laws work in practice.

This has led to greater emphasis on the courts, in particular, whose role is critical to human rights protection and their relationship to other institutions, such as local governments and the police.

Even in highly sensitive areas like criminal justice, we can see reformers going to deeper and more fundamental issues. In 1996, China adopted reforms to make criminal trials more open and give defense lawyers more of a chance to present a case.

Those reforms have encountered many problems in implementation, the root of which is the vast powers of the police in China to detain and investigate before trial.

So now reformers in China are turning their focus to the protection of human rights in the pre-trial stage through establishment of a right to silence and more oversight of the police so that reforms at the trial stage can have real meaning.

Law is certainly not a cure-all. The sad truth is, many of the human rights issues that we care about the most, the right to political expression, freedom of conscience, minority rights, worker rights, are ones that are least likely to be positively affected by legal reform in the near future.

In areas like these where the Communist Party sees social stability or its own survival at stake, it has no compunction about using the legal system to oppress and it retains tight control over legal institutions.

But as legal reform goes deeper, I believe it has potential to become relevant even here. The work in administrative law and in judicial reform that I described in my written statement may, on the face of it, seem somewhat bland and technical.

But under current conditions in China, that is its virtue, for at root it is about opening up the State to public scrutiny and participation and increasing judicial power and independence to curb official abuse.

A fully satisfying resolution of the core problems in Chinese law, especially the relationship of the Communist Party to the legal system, and ending use of the legal system to deprive people of basic political, religious, and other rights, may well have to await a political breakthrough.

We do not know when that breakthrough will come, but in the meantime, I believe that there is much that can be done through legal reform to improve rights protection in China today and to lay the groundwork for still fuller rights protection as and when the broader political environment allows.

Thank you.

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

The CHAIRMAN. Thank you very much. That is very helpful.

Mr. Kumar.

STATEMENT OF T. KUMAR, ADVOCACY DIRECTOR, ASIA AND PACIFIC, AMNESTY INTERNATIONAL

Mr. KUMAR. Thank you very much, Mr. Chairman.

Amnesty International would like to express its appreciation for inviting us to testify at this important hearing.

Mr. Chairman, you asked a very important question in your opening remarks. You asked whether the Chinese legal system is clear, fair, impartial, or whether it is being used arbitrarily.

Unfortunately, Amnesty International's research shows that it is not fair, it is not impartial, it is not clear, and it is being used arbitrarily against political opponents and peaceful political activists.

The end result of this is that we see thousands of political prisoners in prison, religious leaders in prison, and executions in staggering numbers. China executes more people than all of the other countries put together.

During the last 3 months, I think, from May to June or July 2001, during that 3-month period, China had a special campaign called the "strike hard campaign."

The Chinese executed more people during that 3-month period than all the other countries put together for the last 3 years. That shows how sad the situation is there. Law is being used to justify

these executions. Even after executing prisoners, we hear reports about organs being removed without their consent.

In a nutshell, Mr. Chairman, the law is being used as a political tool to suppress human rights and peaceful dissent in China. The Chinese legal system is more friendly to business than human rights.

You also asked to comment about lawyers and other systems. In a nutshell, lawyers are struggling. They are trying to make some difference, but they are unable to make any difference because of the arbitrariness and political interference there.

Confessions extracted under torture are being admitted there. That is part of the problem we face with the death penalty as well.

Also, a special detention called "reeducation through labor" is in place in China. It is being used to imprison people without going through the regular legal system. Over 200,000 people are in prison at this moment under that particular system.

Last, but not least, Mr. Chairman, after September 11, the Chinese have taken advantage of the anti-terrorism issue and passed new regulations called anti-terrorism legislation in China. That came into effect in December 2001. Under that, thousands of Uighurs and Muslims have been arrested and imprisoned. It is continuing to this minute.

When I mentioned about Xingjiang, I cannot wait to mention one particular case. Her name is Rebiya Kadeer. Her case can symbolize the arbitrariness, and also, if I may say, the arrogance, of the Chinese Government. This is Rebiya Kadeer. She was arrested while she was on her way to meet with Congressional staffers.

When a Congressional delegation went to China, they went to the capital of the Uighur province called Urumgi. They were waiting for her, because she is a very successful businesswoman. When they were waiting to meet her, she was picked up outside of the hotel and she was charged with trying to meet with foreigners, and has been sentenced to 8 years. The trials were closed.

You asked, Mr. Chairman, what you can do. There is a great opportunity coming down by the end of this month. The Vice President of China is going to be here. He is going to meet with the President. You can impress upon him to release Rebiya Kadeer and other prisoners in China, be they religious, be they political, or innocent victims themselves. Start a new relationship with him and inform him to take the Commission seriously. That is the challenge you face.

As a human rights organization, we look up to you, Mr. Chairman and the Commission members, to stand up, not to be silent, because you are the only hope.

We hope you will succeed. We are confident you will succeed. Thank you very much.

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

The CHAIRMAN. Thank you very much. That is very helpful.

Mr. Hecht and Mr. Kamm, please talk a little bit about the interplay between a prisoner registry, maybe on a Web site of our Commission, and the issue of legal reform, occurring in China.

Now, maybe there is no real linkage there. But I just wonder if you could discuss it a bit. There might be some way we can help.

But if you see any linkage I would like to hear it. If you do not, tell us that, too.

Mr. KAMM. As you know, Mr. Chairman, under the 1999 Omnibus Appropriations Bill, the State Department was required to build a registry of Chinese prisoners. Little was done for about 2 years, then about a year ago, work was begun.

I am pleased to report that, 2 days ago, I handed over to Assistant Secretary Craner two data bases with approximately 6,000 names. I believe that is by far the largest registry of prisoners ever assembled.

We divided it into two data bases, a registry of information from NGO publications and a registry of information that we have found in official Chinese publications. We are now trying to build a priority list of cases. We think we will come up with about 650.

Now, as to your question of how something like this—— this is, by the way, I think, the first time that we will have at our disposal such a tool. I discussed this with Congressman Pitts the other day.

If you have a sister state relationship with a province in China, as part of that relationship, the American State should be submitting lists of names of prisoners in that province, or in that city, or in that county. We should continuously put forward these lists of names.

Now, with the technology available—and I am not technologically very competent—I understand that you can put into such a registry information on the prisoners and their cases that might have relevance to Chinese law.

Chinese law provides for parole, for instance, when certain conditions are met. You could put that information into a registry. When high-level visitors come to this country, present them with lists of people who, under Chinese law, are eligible for parole. That is just one idea.

Rebiya Kadeer. Another idea. We have uncovered a regulation that states explicitly that when it meets the Foreign Affairs requirements of China, a prisoner can be paroled.

Well, clearly, if this woman was detained because she was about to meet a delegation of Congressional staffers, it seems to me that meets that particular requirement under the regulation. So, when making a call for her release, you could cite that regulation.

These are some of the ways that we can marry these two things and attempt to bring about systemic change, but always with a focus on people, always with a focus on prisoners, people who are there. I just want to end with one final example. There is a young man in a Sichuan prison right now, in a jail, for posting pro-democracy articles on the Web. His is one of the first cases of an Internet dissident. His trial was concluded in August of last year.

I was in Beijing last month and went to the Supreme Court and asked them, how is it possible that the trial was finished in August, but no verdict, no sentence, no ruling? They very sheepishly told me that there are no regulations governing the length of time between the conclusion of a trial and the announcement of a verdict.

So again, when we talk about Huang Qi, this young man, one of the ways to go about it, I think, is by referencing this particular shortcoming in the system.

The CHAIRMAN. Mr. Hecht, do you have a response?

Mr. HECHT. Well, there is no doubt that there is an important relationship between individual cases and systemic failings in the Chinese system. I think as Mr. Kamm rightly pointed out, first of all, many of the individuals who are imprisoned in China for exercising their internationally recognized human rights, are people who would themselves be agents for change, including in the legal system, if they were not being held.

Individual cases are also symptomatic of the broader failings in the legal system, and I think that Mr. Kamm is right, that we should be using our understanding of the Chinese legal system.

I think one of the things that this Commission is contributing will be a better, more detailed understanding of the Chinese legal system, using that understanding to point out where the handling of individual cases violates Chinese law or international law, or both, and also using that knowledge, as Mr. Kamm suggests, to push for handling of individual cases in ways that Chinese law itself allows.

I think that, in addition to that focus on individual cases, there are two other elements to an effective strategy for promoting legal reform and human rights in China. One, is a critique that is an explicitly systemic critique.

Now, in part, as I just said, that will draw on individual cases for examples. But we also need to be looking systematically at the structural problems that exist in the Chinese legal system and engaging people in China, both in government and outside government, directly on those systemic problems and suggesting ways in which they can be addressed.

So in addition to focusing on individual cases, we need to be focusing on systemic failings. Then, finally, we need to be providing support to the people within China who are working to address those systemic problems. So, I think that these several elements can all work together to really provide the maximum amount of support for the sorts of changes that we are looking for.

The CHAIRMAN. All right. Now, I ask the indulgence of my fellow Commissioners here. But if I understand you, particularly, Mr. Kamm, you are suggesting that perhaps, a list or registry of names, can be linked with the issue of what the current legal rights are in China.

It seems to me that the more that is known about some of these changes, as modest as they are, in China and the more people know about it the link with somebody on a list, that this may provide leverage to make something happen.

As you say, Vice President Hu Jintao visits the United States. You say, hey, here are some names. What about that? These are some of the rights these people have and they are not allowed to exercise them. Does that help or not?

Mr. KAMM. What is very important, is to get the Chinese Government to give us information in writing. It is very, very important we do that. We get the information, and once we have the information, we can use it.

The CHAIRMAN. And the information you are talking about here is what?

Mr. KAMM. On prisoners.

The CHAIRMAN. That is names or the rights?

Mr. KAMM. The names and their conditions and their situations. For instance, Liu Jingsheng comes to mind. He is a labor organizer who was imprisoned in 1992. Through the exercise of getting information in writing, we have discovered he has been given a couple of good behavior reductions.

Under Chinese law, he is eligible for release. He has served more than half of his sentence and he has demonstrated the conditions necessary for parole.

So, there is an example. In their own words, they have told you that this man is eligible for parole. He is a very important labor organizer. He tried to establish the Free Trade Union of China in 1992 and was given a 15-year sentence. He has served 10 years of that sentence. He is eligible for parole.

So, that is the kind of thing I am talking about, using the information we have and our knowledge of the system to press for the release of specific prisoners.

The CHAIRMAN. Thank you very much.

Our Commission operates on the early bird system. The early bird is Mr. Cameron Findlay, on my right. After Mr. Findlay, on my list is Congresswoman Marcy Kaptur, Congressman Levin, Congressman Wolf, and Congressman Pitts.

Mr. FINDLAY. Mr. Hecht, I was struck by your emphasis on how important it is to make systemic changes in China. I was wondering if you could take a few minutes and just talk about each of the various institutions that make up the system, law enforcement, trial courts, appellate courts, and then the legal profession. I know that is a tall order, but if you could take a couple of minutes on each one of those.

Mr. HECHT. All right. Well, that is a challenging question. Let me start by saying that the Chinese system, in its roots, borrowed much from the Soviet Union.

In its basic structure, it borrowed the Soviet idea, which in turn was borrowed from the French, of legislative supremacy. So, in theory in China, the most important legal institution is the legislature.

The courts and the executive branch, as well as what is called the procuratorate, which is the state prosecutor but also has a broader watchdog function in the Chinese system, are all subordinate to the legislature. They are appointed by the legislature and they report to the legislature.

One of the more interesting developments in China over the last 10 years has been the emergence of the legislature, particularly at the national level, but also at local levels into its constitutionally defined role as a significant part of the legal system.

The courts are a unitary system. The Chinese do not have a Federal/state divide in their court system. They have a single system of courts, from the top, the Supreme Court, to provincial-level courts, to intermediate-level courts usually in large cities within provinces, and then down to basic-level courts, of which there are about 3,000 in China.

The people's governments, as well as the procuratorates, are arranged similarly, from the national level, to the provincial level, to the sub-provincial, to the local level.

At each of those lower levels, the pattern, constitutionally speaking, again, replicates that at the top. The people's Congress, the local legislature, is, in theory, the superior body and the other three are considered the subordinate bodies.

The police are nested within the executive branch under the governments at each of these levels, though in fact the police have tended to have a status at least equivalent to the courts and to the procuratorates, and in fact have been more powerful.

So, the status of the police in the Chinese legal system is something that bears a great deal of attention because the police have a role and a range of powers, particularly in the criminal justice system but also with respect to various administrative sanctions.

Mr. Kumar referred to the system of reeducation through labor, for example, which is a police-administered sanction whereby people can be sent to labor camps for up to 4 years.

Police powers are enormous in China, and this is a systemic problem that we really should be focusing on to a much greater extent than we have in the past. This is an area where, within China, there is a good deal of debate about whether police powers are too great, about whether these administrative detention powers should be subject to judicial control.

This is an area where we should be paying a lot more attention, both in our own work as people who focus on China and through our government in its interactions with the Chinese Government.

As far as the legal profession is concerned, the Chinese legal profession is quite new. As recently as 20 years ago, there was essentially no legal profession in China. There were a handful of lawyers who had been trained prior to the cultural revolution, most of them quite elderly, and they had had virtually no role, really, since the founding of the People's Republic in 1949.

In the last 20 years, the legal profession has grown enormously. There are now somewhere between 100,000 and 200,000 lawyers in China. That is what has occurred in the last 20 years.

Most of them, of course, like lawyers everywhere, are involved in commercial practice. But there are also lawyers now who handle suits against the government, lawyers of course involved in the criminal justice system though they face enormous obstacles there, and lawyers who are becoming more prominent as public officials. That is another respect in which China is quite different from the United States.

In the legislature in China, you would be hard pressed to find more than a handful of lawyers, which is obviously quite different from legislatures in the United States. But that is an area where there has been a great deal of change.

Mr. FINDLAY. I think my next question will take me over, so I think I will just stop.

The CHAIRMAN. Go ahead. Oops. You had your chance.

Congressman Levin, please.

Representative LEVIN. Thank you very much.

The CHAIRMAN. And I am going to have to go. If you can chair for as long as you can, Congressman.

Representative LEVIN [presiding]. We try to squeeze a week's worth of work into 2 days in the House, so I am sorry that others could not make it. There are conference committees going on, etc.

There is a welfare reform hearing that I will go to as soon as I finish. I guess we will each chair for our own 5 minutes, which is somewhat unique around here.

You are a particularly distinguished panel, and we deeply appreciate your being here. Your experiences show your seriousness and we are going to try to match that.

So let me throw at you one of the challenges before us. The Chair talked about China as a conundrum. Now, the Mideast has totally, understandably, captured the news stories. When that is not happening, there may be more articles on China than perhaps any other country. These stories talk both about change and resistance to change, and the resistance against the resistance to change.

So let me ask you, as you see the role of this Commission, how do we both pressure and participate in the change in terms of engagement? The rule of law is a good example of that, is it not? Because you have suggested here today that we both highlight the individual cases, that we use every opportunity to pressure the Chinese Government, if the Vice President is here, or otherwise.

But also, there has been reference to our assisting them in the development of a rule of law there which is so sorely lacking. We wrestle with this all the time, how we achieve both, in the role of this Commission.

And you have explained it in lofty terms, and we hope we will meet your expectations. We are determined to do that. So respond, will you, about this challenge, how we do both, whoever wants to start.

Mr. HECHT. Well, I hesitate to presume to suggest how the Commission should——

Representative LEVIN. No, no. I am asking you to.

Mr. HECHT. My response would be, China is a conundrum. And I think, as someone said earlier, perhaps it was Senator Baucus as well, it is also not a monolith. I think it is possible to pursue both criticism of China for its handling of individual cases, as well as support for people within China who are trying to improve things there.

I do not think that that has to be an either/or proposition. There are people within China, as you just said, who are supportive of change and people who are resisting change. There are people who are in official positions where they will, of course, be difficult when they are presented with demands with respect to individual political prisoners.

But there are probably people in the same institution down the hall from them with a different set of responsibilities, and perhaps an entirely different set of outlooks, who are interested in engaging with U.S. experts on some of the very same issues that we are complaining about. I do not think we should be afraid to do both at the same time.

Now, it may not be appropriate always to merge those efforts in time and space, because China is not a monolith. It may be best to be dealing with one set of officials in China on one set of issues in one way, and simultaneously be supporting work either through the United States Government, or oftentimes more effectively through non-governmental groups, with another set of actors on another set of issues in China.

Representative LEVIN. Let us take that proposition and see if Mr. Kamm and Mr. Kumar want to comment on that. Do not worry about giving us advice; we are seeking it.

Mr. KUMAR. Individual cases are extremely important because these cases reflect the weakness in the legal system, as well as the arbitrariness by which it is being applied.

In terms of assisting them, first of all, they should have political will to open up. If they are opening up for the sake of opening up because of criticism or because of some other reasons, trade privileges, whatever, it is not going to work.

That is why this Commission should insist upon, whenever you meet with officials and also whenever you have any public documents coming out, to have two-track policies. One is, of course, individual cases. That is fundamental. Second, is to have meaningful change through legal reform.

They had legal reform in 1997, if I am not mistaken. Criminal procedure law was reformed. It was much better than what existed for 16 years, from 1979 to 1997. But it did not go too far. The next challenge is, how are we going to push them to move forward with new challenges and new openings?

So the short answer is, individual cases are so fundamentally important, but we should push for them to open up politically so that they can accept any recommendations that come from outside.

Thanks.

Representative LEVIN. Mr. Wolf, I think it is your turn. With all of your expertise, why do you not take over? Then Mr. Pitts, I think, is next.

Representative WOLF [presiding]. Thank you, Sandy.

Thank you all very much. I will read all of your testimony. I apologize for being late. I want to thank you for your work and for your effort.

I do have a question, but before I ask it I want to make a comment. As you answer the one question, you might also comment on this.

My sense is, the model for the Commission ought to be the Helsinki Commission, and I sense that we may not be drifting in that way. I think the difference is, during the days of the evil empire when Ronald Reagan clearly laid it out, everyone who went to the Soviet Union spoke out on behalf of the dissidents. Everyone. There were no groups that ever went to Moscow without raising these cases, even people who went there on behalf of arms control and disarmament. Everyone always spoke out.

Now there are mixed messages. In fact, many of the Congressional delegations may give a pro forma little touch and a flick with regard to human rights, but it is business. It is business. If the business community would also add in the human rights element, they could do their business and, I think, make a tremendous difference.

My sense is, where I think this Commission may differ, is the Helsinki was the model. We do not need a new model. We have a model. But we have to follow what worked.

What I would like to ask you, is this. With the economic, not crisis, but the conditions that are taking place in China today, what impact do you think this will have on human rights and religious

freedom? There is a new book out which I have not read, but I have a copy at home, "The Coming Economic Collapse." I have had people reading stories of demonstrations at different factories.

What impact do you think this will have? Will this encourage the Chinese to open up a little bit or do you think it will cause them to crack down? What do you think it will do to the conditions with regard to human rights?

Mr. KAMM. I think, Congressman Wolf, both things will be happening at different times and in different places. Right now, in the northeast we have a particularly serious situation.

I mentioned in my statement Yao Fuxin. This is a case I commend to all of your attention. He is the principal labor organizer of the Liaoyang strikes. He has been detained and he has now been formally arrested. The international community needs to raise his case, raise it frequently, and very seriously.

I agree with you entirely. There is no need for another model. The model should be the Helsinki Commission. When I spoke to this in November 1995, that is what I said. I could not agree with you more. I foresee a day when this Commission, as my testimony is entitled, is an arsenal of human rights.

Every Congressional group that goes to China and beyond, as I mentioned, if there is a sister state/province relationship, if State legislators are going, they should turn to this Commission for an up-to-date list of prisoners in that location.

I think every Member of Congress that goes to China should be armed with prisoner lists and should be briefed before he or she goes. Sometimes things are said to members—by Chinese officials—and they do not have the background. They need to know what we know about the cases before they go.

So, I agree with you. That is what I see as the promise of this Commission, a very active Commission. I think you have already the standing with the Chinese Government to take that up, and you should do it. You should do it as quickly as possible. You should not miss any opportunity to present to the Chinese Government the lists of the names of people who are imprisoned for their religious and political beliefs.

Mr. HECHT. You are right that China is going through a very complicated economic transition. It is an economic transition that has winners and it has losers. There are large numbers of winners. Many, many people in China live far better now than they did 20 years ago. We all know that.

But there are losers. The workers in state-owned enterprises are losers, and it is entirely possible, as WTO begins to bite, that there will be many other sectors of the Chinese economy where there are more losers. I think that the Chinese Government is worried about that. When the Chinese Government gets worried, it tends to get tough.

I think there is a considerable likelihood that, in the near term, particularly in response to concerns about the impact of the WTO in China, which is very risky, we will actually see tougher tactics against people with economic grievances. I think that is entirely right.

I also agree entirely with your other point. I think that human rights has to be viewed by people in this country as something that

is vital to all of our interests in China. It is not something that should be separated or ghettoized.

It is as important to our strategic concerns and our economic concerns as it is to our, more explicitly, rights concerns. I think that it is important that people in China at all levels of the government get that message.

I think it is important, not only so that they understand the depth of our commitment on those issues, that it is not just some particular part of our bureaucracy or some fringe group in our society that cares, but in fact this is a deeply and widely held view.

I also think it is important in the Chinese context, because I think that, just as sometimes human rights has tended to be separated and ghettoized in our government, it has been separated and ghettoized in the Chinese Government.

I think that when people go to China to talk about trade issues or investment issues and they are meeting with people on the Chinese side whose responsibilities lie in that area, they should be making them aware of how important in our own history and our own economic development the question of rule of law, and rights, and reliable legal institutions has been.

In that way, we build the constituency within China for rule of law and human rights rather than allowing them to continue to think that this is just some parochial concern of some people in a handful of institutions. So, I agree, that is very important.

Mr. KUMAR. As a human rights organization, we appreciate your comment, Congressman Wolf. We have always admired your work in terms of human rights around the world.

The Helsinki Commission model is something we expected this Commission to follow. That is what we all thought when the Commission was set up. We want the Commission to take the fundamental issue of human rights in every step they take.

Now, with China, the interest of business has basically overtaken other interests between the bilateral relationships.

On that note, I would like to congratulate Mr. Kamm for being a businessman, and also doing human rights work. Mr. Kamm's work should be the model for other business leaders and other business organizations.

Representative WOLF. I agree.

Mr. KUMAR. Coming back to the issue of what will happen, whether there will be a clamp-down or there will be opening when there is economic instability, the only thing we can say is to look at other examples.

The other examples in other countries point out that when there are economic difficulties or other issues, then governments tend to clamp down. That is why rule of law is fundamentally important.

When there is a lack of the rule of law, governments can clamp down with ease. As I mentioned in my opening remarks, the new law that came into effect after September 11, in the name of antiterrorism in China, is the one that they are going to use against anyone who raises their voice against the government's authority.

Now it is only limited to the Muslim province of Xingjiang. It will not take long to extend it when they need it. That is why we have to raise our concerns at this moment about that law, as well as other laws.

Thank you very much.

Representative WOLF. Thank you very much. Thank you.

You are going to have to chair. There is a vote on. There is a vote on in the House.

Mr. FINDLAY. Congressman, I have enough difficulty running my department. I would not deign to chair a Congressional committee. But I think Mr. Pitts is next.

Representative PITTS [presiding].Well, I will ask a question and then I will have to go vote as well.

Thank you very much for your testimony. I, too, will read it.

Mr. Kamm, you mentioned that it is very important to get information in writing from Chinese authorities regarding specific prisoners. As we have discussed, you have been very successful in your tactics.

As I understand it, you are suggesting that the Commission or someone compile a list of all of the sister relationships that may exist. There may be hundreds, state-to-state, county-to-county, city-to-city, hospital-to-hospital, school-to-school, university-to-university, whatever. Then this data base could be used to pull out a certain number of prisoners, say, for a certain province or a certain city.

Then you would give this data base or this list to the appropriate officials, Congressional delegations going over or hosting, mayors, or whatever, school officials. What, would you elaborate, is the culturally acceptable way of submitting lists or requesting information? Can you elaborate on that?

Mr. KAMM. Well, this gets into, sort of, tradecraft here a little bit, again.

Essentially, at the outset of the relationship, you make clear that, as part of this relationship between a, say, State and a province, human rights is very much a part, from the American side, because we are very interested in human rights. We make that very clear to start out from that point of departure.

Then once you have made that very clear, you take the approach that, well, for us to have a conversation about human rights, we need to have accurate information on cases. Law is made in the courts every day through cases, so we view legal developments, law, human rights, through the prism of cases.

Therefore, we have taken with us a list of cases that we would like to get information on in writing from you, and based on that information, we would like to have a dialog with you on these cases and see whether or not we can make some progress in resolving these issues.

That is, more or less, the approach I would take. There is no substitute for good preparation. I go every quarter to Beijing and I carry prisoner lists, and I have thick files backing up every name that I ask about. There is just no substitute for that.

So, I would recommend that this Commission can, in fact, perform that very important function. Before members go, you provide them with the information and you provide them with briefings. I would be delighted to help the Commission in any way you see fit to assist in that regard.

We have seen in the last year a change on the part of the Chinese Government. A year ago, they were not giving information in

writing in response to government lists. They were doing so with me, but they were not with government lists. Now they are replying, not just to American lists, but to British and European lists.

We have got to work with our allies as well in coordinating this flow of information and effective advocacy. If someone is working hard on one case, let them work on it, keeping us advised. Work hard on another case. We need to do a better job of that. Those are just some ideas.

Representative PITTS. All right. How important is relationships in the culture? Would you comment on, what is the biggest fear of the business community—you can speak to the American business community, if you like—about getting involved in something as basic and simple as requesting a prisoner status report, even if it is done as a group, through such a group as, say, the American Chamber of Commerce, so that no one business needs to stick its neck out. What is the main problem there?

Mr. KAMM. Well, if I knew the answer to that I would be a much happier person. I have been trying to get the business community to do what I consider to be very non-threatening and very basic human rights work for a long time.

Jonathan has just said that he, too, thinks it would be a great idea. I guess later we will have a conversation as to how we might convince them to do so. They have resisted it at every turn. They have refused to get involved in this respect.

Why? Various reasons are put forward. They are afraid that the Chinese will retaliate against their business. I have made it clear that, in 12 years of doing this work, not once has a Chinese Government official threatened my business, but for some reason, business people do not want to believe that.

There is the issue of them not knowing enough. They say, we do not know what the facts are. That, too, is an obstacle, I think, that is easily overcome and the Commission can help there.

But I have to tell you, as someone coming out of the business world, more and more as I work in this area I think it is a matter of corporate culture. That is a big part of it.

I come from a generation of people going overseas as expatriate businessmen, and the first thing you are told before you take an assignment overseas by a big corporation, is stay out of local politics. That is the first thing you are told. I am afraid that I am viewed in the corporate world as someone who has violated that number one rule. I have never accepted that.

I am afraid, for the most part, business people, especially those beyond a certain age, simply, it runs against corporate culture to involve yourself on behalf of the people in the country where you are doing work.

It is a very sad thing. And I really admonish my remaining friends in the business community: Think. Think about the future. If you are running a Ford Motor Company plant in South Africa today and someone in your plant asks whether you think Nelson Mandela should have been imprisoned for 30 years, I suggest you say no. That would not have been your answer 25 years ago. Do not think they do not understand that.

Some day, business people—well, let me put it in a positive way. If, in fact, they are willing to intervene on behalf of these people, their businesses will, in fact, be rewarded some day, in my opinion.

Representative PITTS. Thank you.

Do any of the other witnesses want to comment? Mr. Kumar.

Mr. KUMAR. Yes. Amnesty International, as an organization, never takes a position on sanctions. We do not oppose or support.

But we always urged the business community, individual business leaders, to raise cases and issues with respective governments where they do business. Some have, but many refused.

The fundamental issue with China was that, until PNTR [permanent normal trade relations] became permanent, the business community felt that human rights was being used to block their permanent relationship. So they took the opposite view during that time and they are still in that mode, saying that human rights are against us, so we should not get involved. We should educate them. That is our job, and everyone's job that goes over in China.

Also, they should, by their own self-interests, raise these issues. If the local government is going to be unfair and brutal against their own citizens, it will not take long to go after their factories and their employees.

Human rights are not a political issue. Human rights is not a political issue at all. It is about fairness and decency. It transcends beyond borders. It transcends beyond cultures. It transcends beyond everything. It is fundamental, basic human dignity and fairness. That is what human rights is all about.

I like to compare this situation to Afghanistan. There are some corporations that had dealings under the Taliban. We could not believe what some of the women executives would come and discuss with us, defending Taliban policies at that time. I hope the business community that is doing business in China will not go that far to defend something that is against their conscience.

So that is the challenge, and we all should face that challenge. Thanks.

Representative PITTS. Thank you.

I think it also should be said that one of the selling points from the business community for PNTR, MFN [Most-Favored-Nation], or NTR, whatever it was called in a given year, was that more engagement, more involvement by the business community in China would result in improved human rights. That was one of their selling points. I think they should be reminded of that.

I will turn the hearing back over to you for a second round. Thank you very much.

Mr. FINDLAY [presiding]. I find myself in the position that every Executive Branch official dreams of, controlling a Congressional hearing room by myself.

But because of the votes going on in the Senate and the House, I think it is probably best that I just thank our distinguished panel for being here today and for answering our questions so forthrightly. The testimony and the answers were enlightening, and inspiring as well.

So, on behalf of Chairman Baucus, I will declare this hearing closed. Thanks.

[The prepared statement of Congressman Bereuter appears in the appendix.]

[Whereupon, at 3:40 p.m., the hearing was concluded.]

A P P E N D I X

PREPARED STATEMENT OF JOHN KAMM

APRIL 11, 2002

I was an early advocate of a Congressional Executive Commission to monitor China's human rights situation, speaking in favor of it to Congress' Helsinki Commission in November 1995, so naturally I am more than a little pleased to appear before you today. To examine China's compliance with international and bilateral human rights treaties and agreements and to make recommendations for our country's human rights policy toward the People's Republic of China, President Bush and the Congressional leadership have assembled a knowledgeable and diverse group of commissioners, all of whom have taken an active interest in US-China relations, and all of whom have strong beliefs on how best to pursue our national interests. I am grateful to Senator Baucus and Congressman Bereuter for the strong support they have given me and my work these past several years. The commission is guided by two fair-minded men of high integrity, and I have no doubt that this body will, under their leadership, play an important role in identifying effective ways to address the serious situation we confront in China today.

Several members of the commission, including Senator Brownback and Representatives Leach and Pitts—have written letters to the Chinese government backing my efforts to obtain information on, and the early release of, prisoners whose cases I've taken on. I am especially grateful to Congressman Pitts for his help pressing the Chinese government on the case of Bishop Su Zhimin. I have benefited from Congresswoman Pelosi's advice and concern for my work over many years. I am fortunate to have someone like Congresswoman Pelosi, a recognized leader in the effort to promote human rights in China, representing the district where I live and where my foundation is based.

PRISONER RELEASES AND HUMAN RIGHTS DIPLOMACY

I am especially proud to be testifying before a body that includes as one of its distinguished members Congressman Frank Wolf, with whom I was honored as a recipient of the Eleanor Roosevelt Award for Human Rights this past December. Congressman Wolf and I have not always agreed on what policy should be adopted to deal with violations of human rights in China, but on one thing I believe we are of one mind. In formulating and implementing our human rights policy toward China, the United States must place a very high priority—I would say the highest priority—on securing the release from prison of individuals detained for the non-violent expression of their political and religious beliefs, and until the day of their release, the most humane treatment that the prison system affords.

This position is not, I'm sorry to say, popular with members of the American business community in China, nor is it embraced by some who are active in the field of human rights. Some activists call working for the release of prisoners "humanitarian work" and distinguish it from "human rights work." Getting a few people out of prisons is fine for those released and their family and friends, but such a result does nothing to change the system that put them in prison in the first place, critics say. One prominent human rights activist has even said that, because the Chinese government is sometimes able to manipulate the process of negotiation and release to score public relations points, working to free prisoners actually strengthens the regime's ability to arrest other dissidents. Pressuring the Chinese government is often compared to the odious business of "hostage politics," and those who engage in this work are sometimes referred to as "hostage negotiators."

Far from being a side show, working to secure the release of political and religious detainees is the highest calling of human rights activism. I believe that the most important thing the United States can do to bring about systemic change in China is to work for the release of people imprisoned for their political and religious beliefs, people who are making great sacrifices to bring respect for human rights and rule of law to China.

Let me state the obvious: Outsiders, with the exception of a few committed and disciplined exiles, will not be the principal catalysts for change in China. The agents of change will be found among the people of China. They are democracy advocates like Xu Wenli, labor organizers like Yao Fuxin, entrepreneurs like Rebiya Kadeer, and brave clergy like Bishop Su Zhimin and his Auxiliary Bishop An Shuxin. They are scholars like Tohti Tunyaz and journalists like Jiang Weiping who dare to expose corruption and otherwise speak truth to power. To them belong the pain and glory of bringing change to China, but they can do little to reform the country if they are locked in prison cells together with tough and hardened criminals.

It was international pressure that saved the lives of Nelson Mandela, Kim Daejong, Lech Walesa and many others who eventually brought democracy and so-

cial justice to their countries. Yesterday's imprisoned dissident is today's leader of a democratic and free society. Does anyone believe that by passing another resolution or by running a few more seminars to train judges or by holding another legal exchange in which the sides do not discuss actual violations that more can be accomplished than what is accomplished by freeing from prison those who know the country best, who have suffered for their beliefs and who have thought long and hard of ways to bring about a better China?

When a government is forced to release its grip on a prized prisoner, a current of electricity that is hope runs through the community of those who yearn for freedom and justice. And that hope inspires and emboldens others who know that, whatever happens, they will not be forgotten. Striking workers, like those in Liaoyang and Daqing, make securing the release of their leaders a principal goal of their movements. Should we do less?

A man or woman of faith who walks out of the dungeon that once held St. Paul is living proof of God's saving grace. I am firmly of the opinion that the explosion of religiosity in China in the mid-to-late 1990's was at least in part brought about by the successful campaigns to win the release of Catholic clergy and house church preachers in 1992 and 1993. I have seen photographs of the triumphal return of jailed bishops to their villages. On the faces of the faithful one sees expressions of rapture, the awe of being in the presence of living saints. Many of these clergy were sent back to jail, some within months of their release, but in the time they enjoyed freedom they said Masses, administered the sacraments including the ordination of priests, established seminaries and sent out of China testimonies on which we rely for a picture of what is going on in that great but wounded country.

Prisoners are first and foremost human beings. Prisoners have rights—the right to due process, to medical care, to regular family visits, to be free from physical and mental abuse—and getting the Chinese government to recognize and better protect these rights contributes to greater respect for rule of law and a greater "rights consciousness" which must gain hold if a better rights environment is to be achieved. Xi Yang was a Hong Kong journalist imprisoned for 12 years for leaking State secrets. As a critically important part of the campaign to win his release, we established that a prisoner's family has a right to a copy of the verdict, even in cases involving State secrets. It was while working on the Ngawang Choephel release that we uncovered the 1990 regulations on medical parole that allow for the release of prisoners who have contracted "serious and chronic" illnesses in prison, and who have served one-third of their terms. Chinese officials with whom I work now freely make reference to the "one-third rule," the application of which may well lead to more releases in the future.

One of the most popular books for sale in Chinese legal bookstores these days is a thin volume entitled "Yi An Shuo Fa," which translates as "When speaking of the law, look at cases." Although the Chinese system does not recognize the binding nature of precedent, it is clear to me that precedent established in one case can in fact play a role in the resolution of other cases. When we uncover ways to help one prisoner win freedom, opportunities arise to use what we learn to help others win freedom. Doing humanitarian work cannot be separated from doing human rights work. They are both about building respect for the rule of law.

By focusing our efforts and resources on individual cases, the United States sends a clear message about the value of the individual, and the priority we place on the rights of the individual. As I am fond of telling my Chinese interlocutors, you can't talk about human rights without talking about human beings. The problem with our human rights diplomacy in recent years is not that we've been too focused on winning prisoner releases but that we haven't been focused enough. We shouldn't be getting out of the "prisoner list business," as one senior American diplomat once suggested to me, but rather investing more time and resources in order to achieve more and better results.

PRISONER RELEASES: ASSESSING CHINA'S MOTIVATIONS

Before reviewing recent developments in the effort to secure the release and better treatment of political and religious detainees, I'd like to spend a few moments examining the motivations of the Chinese government in making prisoner releases. This is a subject I am qualified to speak about. Hardly a week passes that I'm not engaged in several conversations about prisoners with officials of the Chinese government.

It is often said that the Chinese government makes releases of high-profile prisoners to score public relations points and otherwise burnish its image. This was decidedly the case in the early 1990's, when Beijing sought to influence such things

as the debate on MFN or the decision on the 2000 Olympics. It is not the case today, however. Officials with whom I work do not as a rule want publicity.

There are at least two reasons for this. First, there is little evidence to suggest that making prisoner releases has in fact improved China's image in the United States. Soundings taken by Gallup indicate that China's "favorable versus unfavorable" ratings have shown little change for several years, and when ups or downs take place, they seem to take place for reasons that have little to do with the arrest or release of individual dissidents (e.g. the downing of the EP3 surveillance plane or the accidental bombing of the Chinese embassy in Belgrade). Roughly 45 percent of the American people have a favorable impression of China, roughly 45 percent have an unfavorable impression, and 10 percent are undecided. When asked by Gallup if the events of September 11 had changed their view of the crackdown by the Chinese government on Uygurs in Xinjiang, the great majority of Americans replied that their opinions had not changed, and that they disapproved of the crackdown. Every poll on the subject confirms that Americans have a poor opinion of the Chinese government insofar as its record on human rights is concerned, and a prisoner release here or there hasn't changed that opinion.

The second reason why Chinese officials don't want publicity about prisoner releases is that many senior members of the party and government are opposed to setting dissidents free. They view the release of a high-profile opponent of the regime as a sign of weakness and even of humiliation. They oppose releases as craven concessions to foreign powers. Sometimes, a prisoner release will run counter to an "official line" that the government is trying to take. In January 2001, I announced the release of Yu Zhijian, a Hunan teacher, sentenced to life in prison for throwing ink on Chairman Mao's portrait in May 1989, on whose case I had worked for many years. Around the time I made the announcement, the Chinese government was reacting to the publication of The Tiananmen Papers by stressing that the verdict on the June 4 demonstrations would not be changed. How, foreign journalists asked at a regular Ministry of Foreign Affairs briefing, could the regime on the one hand say that the verdict would not be changed and on the other release one of the best known dissidents sentenced to prison for his role in the protests? Officials with whom I had worked on the Yu case were criticized, and provision of prisoner information to me was suspended for nearly 6 months.

While the Chinese government has for the most part given up using prisoner releases to improve its image with the general public, it will sometimes release prisoners as gestures aimed at foreign leaders and legislators, often in the run-up to a visit to China by a foreign politician or a visit to a foreign country by a Chinese leader. It also occasionally happens that prisoner releases are made to hint at a possible change in domestic or foreign policy. Thus, prior to negotiations with the Vatican on the normalization of relations in 1993, a number of clerics were set free to create a better atmosphere for the talks. I am watching carefully to see if recent developments regarding Tibetan prisoners might presage a change of policy toward Tibet. Thus far, I don't see it.

Sometimes releases take place in response to a specific request for information from an organization or individual with "standing" in the eyes of the Chinese government. China is a member of the International Labor Organization, and is required to respond to complaints filed by the ILO's Committee on Freedom of Association. Information on parole and sentence reductions for Chinese labor leaders suggests that the Chinese authorities released them and reduced the sentences of others shortly before replying to complaints made by the CFA.

Years of hard work building credibility and trust have resulted in my having "standing" with the Chinese government to inquire about political and religious detainees. I am determined to use this position to help as many prisoners as possible, for as long as I am able to do so. I regret that leaders of the American business community, men and women of considerable power and influence in China, have thus far refused to use their standing with the Chinese government to press for the release of those jailed for exercising the rights of free speech and association. These are rights that business people themselves take for granted, and on which the success of their own businesses in large measure depend.

It is true that, if the Chinese government is worried about losing a trade privilege or if it fears losing a vote in the United Nations on its human rights record, it will seek to influence the outcome by making gestures like releasing prisoners or signing human rights treaties. But if it is confident of victory, the opposite is the case. Rather than making gestures, Beijing will hold off making prisoner releases and will instead act defiantly, thereby demonstrating to its people that it is standing up to foreign pressure.

Releases will be made if they help the government achieve a strategic objective. Even before the September 11 attack, Beijing had made a strategic decision to work

for better relations with the United States. The events of September 11 greatly reinforced that decision. The Chinese leadership knows very well that gestures in the area of human rights will be welcomed by leaders in Washington, including Members of Congress. The decision to improve relations with the United States—a decision that has manifested itself in many ways—is the principal reason why the Chinese government has carried out releases in recent months (e.g. the release on medical parole of Li Shaomin, Gao Zhan, Wu Jianmin, Ngawang Choephel and, most recently, Jigme Sangpo). We need to take advantage of the Chinese government's desire to build better relations with the United States by pressing Beijing to release more prisoners, and to reduce the sentences or otherwise improve treatment of those still held. The time for action is now.

This last point needs to be stressed. What my interlocutors call "cooperation in the area of human rights" is heavily dependent on the State of US-China relations. When relations are good or improving, Beijing is more likely to release prisoners than when relations are bad or deteriorating. My own work has been greatly affected over the years by disputes between Washington and Beijing over the perennial issue of Taiwan.

RECENT DEVELOPMENTS

The Bush Administration is engaged in one of the most intensive efforts ever mounted by an American administration to win the release of political and religious detainees in China. Assistant Secretary of State Lorne Craner has made it clear to his Chinese counterparts that he is not interested in participating in a "talk shop," but that he expects concrete results from the official human rights dialog. By results he means plentiful and accurate information on cases, and the release and better treatment of prisoners. In October, he obtained from his Chinese counterparts detailed information on 68 of 74 prisoners about whom he had submitted enquiries, and the unprecedented Chinese response has provided us with a roadmap for working on a number of important cases. It is no coincidence that the first name on Mr. Craner's July list was that of Ngawang Choephel, who was released and flown to the United States on January 20. In a decisive break with tradition, Ambassador Clark Randt, encouraged by Congressman Wolf, publicly called for the release of specific individuals, including Bishop Su Zhimin, Xu Wenli, Liu Yaping, Li Guangxiang and Jigme Sangpo during a speech to a Hong Kong audience on January 21. It is no coincidence that the last two prisoners—a Bible "smuggler" for whom President Bush showed special concern and China's longest serving counterrevolutionary—were set free in the weeks following the Ambassador's speech.

President Bush, on his visits to Shanghai and Beijing, has called for more religious freedom, and as part of that call he has urged the Chinese government to release leaders of unauthorized religious groups. The administration has breathed life into the proposal, made when President Clinton visited Beijing in July 1998, that China review the sentences and release from prison people serving sentences for counterrevolution. According to local statistics obtained during my visit to China a month ago, I estimate that there are still more than 600 counterrevolutionaries in China's prisons. They include people like Zhang Chengjian, who has served more than 18 years for attempting to form a political party, Sun Xiongying, who gave prodemocracy speeches and defaced a bust of Mao during the June 1989 demonstrations, Ngawang Oezer, sentenced in 1989 to 19 years in prison for translating and distributing the Universal Declaration of Human Rights in Tibetan, Liu Jingsheng, who has served more than 10 years for trying to establish an independent trade union, and Han Chunsheng, sentenced in 1996 to 8 years in prison for writing letters to the Voice of America.

Members of the Commission, including Senators, Congressmen and Congresswomen, and representatives of the Administration, have been of great help to me and my foundation as we pursue our unofficial dialog with the Chinese government on prisoners. We have been focused on gathering information on lesser known prisoners, some of whom—like Li Jingdong, a recently released democracy activist in Fujian—we've found through our research into official Chinese publications. On my last trip to Beijing, I was given detailed information on the fates of five Tibetan farmers sentenced in 1992 to long terms for counterrevolutionary propaganda and incitement. Reflecting the generally harsher treatment meted out to Tibetan prisoners, three of the five are still in prison, serving their original sentences. (One of the prisoners was released on medical parole, and one died while in prison.) Their names will start appearing with more frequency on lists submitted to Chinese officials by the American government, and by the governments of other countries with whom we have developed cooperative relationships.

THE PRISONER INFORMATION REGISTRY

The Omnibus Appropriation Act of 1999 mandated the establishment by the State Department of a Registry of Information on Chinese Prisoners. Little was done to create this registry until Assistant Secretary Craner, who is a valued member of this commission, took up his position. He has made the creation of the registry a matter of top priority, and I am honored and pleased to have assisted him on this project. Two days ago, I presented to Mr. Craner the first fruits of our labor—two data bases that together contain more than 6,000 names of individuals, with supporting details, believed to have been detained for political or religious reasons. (We have included in the data base the names of detainees we know or believe to have been released, but who likely remain under surveillance or endure other kinds of restrictions.) One data base contains the names of more than 4,000 detainees about whom non-governmental organizations have obtained information from a variety of unofficial sources. The other data base contains the names of more than 2,000 detainees whose existence has been revealed in officially authorized Chinese publications.

I am especially proud of the work my colleagues at Dui Hua have done in uncovering the names of hitherto unknown detainees. We have surveyed thousands of documents, amassing names of detainees, statistics on political crime, and laws and regulations that govern the treatment of prisoners, unauthorized religious groups and national minorities. About 80 percent of the names that we've found in nearly 3 years of archival work are of detainees whose names do not appear in any governmental or non-governmental data base outside of China. We have submitted roughly 450 of these names to the Chinese government, and asked for its help in finding out their present circumstances.

I know that Assistant Secretary Craner is eager to provide to this commission the data base that Dui Hua has created and which Dui Hua will be continuously updating and improving. One of the jobs of this commission is the establishment of its own prisoner registry, and for this task the State Department's Registry will be of considerable value.

Prisoner registries, accessible on-line, will be valuable tools in the effort to secure the release of people detained for the expression of their political and religious beliefs. It is now possible to generate a multitude of prisoner lists containing the most current information, each for a specific event—a trip to China by a Congressional delegation (separate lists can be generated for each city visited), the participation of an American delegation in an international human rights forum, the preparation of reports on human rights conditions in China, the visit of a senior Chinese leader to the United States. Lists of prisoners eligible for medical parole, or good behavior parole, can be compiled. Lists of imprisoned labor leaders, house church pastors and Catholic priests, journalists and scholars can be generated and handed over by American groups meeting with their Chinese counterparts.

In another time, and for another purpose, our country was an "arsenal of democracy." This commission, by marshalling resources and fashioning tools made possible by advances in technology, and by undertaking forceful advocacy on behalf of political and religious detainees, can become an "arsenal of human rights," a vital source of support for those inside and outside China working to bring about respect for human rights and rule of law. The Dui Hua Foundation stands ready to help this commission in fulfilling its promise.

Thank you for inviting me to participate in this important hearing.

PREPARED STATEMENT OF JONATHAN HECHT

APRIL 11, 2002

Thank you Senator Baucus, Congressman Bereuter, and the other members of the Commission for inviting me to speak here today.

I have been working on legal reform and human rights in China for the past 12 years. I have done this in a number of different capacities. For 4 years, as a Program Officer in the Beijing office of the Ford Foundation, I made grants in China to support research and advocacy on human rights and related legal issues, to strengthen legal education and training, to promote village elections and other forms of popular participation, and to establish China's first nongovernmental legal aid centers. I have been an adviser to the United Nations High Commissioner for Human Rights on how to develop its new program of assistance for Chinese legal reform. I have been an analyst and consultant on Chinese legal developments for human rights groups here in the United States. And in 1999, I helped found The China Law Center at Yale Law School, where in addition to teaching and con-

ducting research on Chinese law, we are developing and carrying out cooperative legal reform projects between United States and Chinese legal experts, many of them with important human rights implications.

As Congress recognized in establishing this Commission, it is vitally important that China make progress on human rights. This is important first and foremost for Chinese themselves, who have long lived under political systems that denied them fundamental freedoms and are now navigating a difficult transition toward a market economy and, hopefully, a more open society. But it is also important for the rest of the world. China's emergence as a global power is one of the most important geopolitical events of our lifetimes. It is essential that the China that emerges from this process is one that respects individual liberties and its internationally binding commitments on human rights. Progress on human rights in China is also vital to the United States. Our relationship with China is one of our most important bilateral relationships. It cannot be truly cooperative until the human rights situation in China improves.

Based on my experiences over the last 12 years, I believe that legal reform can help foster respect for human rights in China. Prior witnesses before this Commission have described the progress that China has made in developing its legal system since 1978, as well as the great deficiencies that still exist. As their testimony has shown, law is playing a vastly expanded role in China today. Whereas under Mao law was viewed solely as a "tool of the proletariat dictatorship," it is now being called upon to play multiple roles in economic and social life, including defining rights and establishing institutions and procedures for their protection. In many respects Chinese law still falls far short of international human rights standards. We see this every day in the Chinese government's use of the legal system to suppress political dissidents, religious groups, labor activists, and many others. However, as paradoxical as it may seem, law is simultaneously the principal medium through which Chinese are engaging in debate and experimentation about human rights and the closely related issues of the predictability, transparency, and accountability of State action.

The increasingly explicit human rights dimensions of Chinese law are reflected not only in theory but also in a range of legislation adopted since the late 1980's. Some of the most important legislation has been in the area of administrative law, which seeks to guide and even limit State power in China's increasingly market-oriented society. The 1989 Administrative Litigation Law created the first procedural basis in Chinese history for private parties to seek judicial review of the acts of State agencies and officials. This was followed in 1994 by a statute governing compensation for damages resulting from illegal State actions and in 1996 by the Administrative Penalties Law, which seeks to strengthen procedural safeguards for persons subject to administrative sanctions. Over the course of the early 1990's, China also adopted a series of new laws on the rights of traditionally disadvantaged groups such as women, children, and the handicapped. The protection of human rights has even become a legitimate objective in highly sensitive areas such as criminal justice, where efforts have been made to curb police powers of detention, enhance the role of defense lawyers, and make trials more open and fair.

These new laws contain serious flaws in conception and face many obstacles in implementation. Reformers within China are working to highlight these problems and to press for further change. In the meantime, Chinese themselves are making increasing use their expanded legal system. The number of cases in the Chinese courts, including successful suits against the state, has risen dramatically in the last decade. In addition, new groups have emerged to advocate for improved legal protection of rights, often through legal aid centers for women's rights or administrative litigation or the environment. As this shows, legal reform and other developments in China are creating increased rights consciousness and higher expectations for the legal system. This is a very important trend, for law should not only foster respect for human rights. It should also be a means by which individuals can demand respect for human rights.

Another recent trend in legal reform in China with important implications for human rights is the increased focus on structural reform. With greater use of law to order economic and social affairs and protect rights, more attention is being paid to the institutions necessary to make that law work in practice. In the last few years, recognition of the seriousness of the problems legal institutions face in China (including corruption, incompetence, and outside interference) has triggered widespread interest in "judicial reform." Encompassing prosecutors, police, and lawyers, as well as the courts themselves, "judicial reforms" adopted or under consideration include increasing the transparency of legal proceedings, restructuring the relationship between the courts and local governments to reduce interference in the judiciary, modifying the internal structure of courts to give trial judges more power, al-

lowing lawyers to play a more active role on behalf of their clients, and generally broadening the role of courts in adjudicating disputes, including suits against the government. These reforms touch on fundamental and often sensitive issues, including the relative independence and power of different institutions. As such they are complex and controversial and their implementation has sometimes been partial at best. But the fact that they are now being considered and debated shows that legal reform in China has reached a new stage of potentially great significance for the protection of human rights.

In addition, as law has become more central to life in China, the resources for further legal reform have become stronger. Whereas China had only two functioning law schools at the end of the Cultural Revolution, today it has more than three hundred. The scholars at these law schools and at legal think tanks represent a tremendous source of intellectual talent and reformist energy. In the last 10 years, Chinese legal scholars have pioneered work in human rights theory and constitutional law, established China's first public interest law centers, and spearheaded legislative advances in criminal procedure and administrative law. Following China's signature of two major international human rights treaties in 1997 and 1998, many of them are now openly advocating further reforms to bring Chinese law into conformity with international standards. Two decades of legal reform have likewise profoundly altered China's legal professionals. While problems of judicial corruption and incompetence remain quite serious, judges in China today are far better educated and more sophisticated than 20 years ago, especially at higher levels of the system. The transformation of the bar has been even more dramatic. Whereas China had less than 2000 lawyers in 1978 and only 30,000 as recently as 1990, by the late 1990's the number had topped 100,000. In the course of these developments, the old concept of the interchangeable "political-legal cadre" has given way to a stronger sense of the distinctive institutional interests and outlooks of judges, prosecutors, and lawyers. Together with greater awareness of the way in which their foreign counterparts work, this has stimulated important reforms, especially in criminal cases, to differentiate more clearly among their respective roles and thereby increase the transparency and fairness of the legal system.

The acceptance of human rights as a legitimate objective of the legal system, the growth of legal consciousness, the increasing emphasis on structural reform, and the emergence of a large number of sophisticated legal experts committed to rights—these are all significant advances that mean legal reform in China can and will continue to foster respect for human rights. But we must also honestly recognize that law as a force for change in China has real limits: new legislation is often vague and leaves too much discretion to lower-level officials; implementation is often incomplete and founders for lack of complementary reforms; the skills and integrity of legal professionals are often suspect. Moreover, while modern law carries with it values of rights, predictability, and accountability, it tends to reflect changes in society as much as it drives them. Fostering respect for human rights in China will thus depend on many other factors besides just law, especially given China's socialist legacy (which made individuals dependent on the State for every aspect of their lives) and its much longer authoritarian legacy (which has inculcated a tradition of deference to political authority).

In addition, while there is a significant and growing "bottom-up" factor to legal reform in China, China is still in many ways a "top-down" society. There must be the political will among Chinese leaders for greater rights protection if that is going to become a full reality. Such will does exist in some areas, in part because even China's leaders are not immune to broader social trends, and in part because it is in their interests to restrain wayward officials. But there are still many areas in China where law is simply irrelevant, where the legal system is manipulated by the Chinese Communist Party to target its opponents, or where legal "reform" actually serves to deprive individuals of their internationally recognized human rights.

Thus while law in China can foster respect for human rights, it will not necessarily always do so. This means that we, in seeking to promote human rights, must think carefully about where and how to support legal reform efforts in China. We should be choosing to work in areas of the Chinese legal system where there is real potential for progress. There are numerous possibilities, but at present, some of the most promising work is in the area of "judicial reform," including steps to enhance the transparency, competency, and fairness of criminal and civil cases and strengthen the courts' ability to review State action under the Administrative Litigation Law and other statutes. Further efforts should also be made to promote the development of administrative law to increase the openness and predictability of government action and enhance opportunities for Chinese to participate in rulemaking and decisions that affect their interests.

We must also pick our Chinese counterparts carefully, to ensure that they are both influential in legal reform and genuinely committed to rights protection. In order to have the greatest impact, outside support should focus on institutional reforms that cut across a broad range of legal fields and provide a structural basis for human rights protection. Since institutional change is complex and slow, even under the best of circumstances, outside support for legal reform in China must also be sustained, providing reformers with a range of practical alternatives that they can tailor to the unfolding reform process.

Finally, support for legal reform within China must be combined with other approaches, including forthright criticism of the many respects in which Chinese law does not meet international human rights standards. The past has shown that, when well informed and combined with targeted support for reformers within China, outside criticism can play a significant role in promoting positive change in the Chinese legal system.

I believe that this Commission can play a particularly valuable part in these efforts. Through the work of its members and professional staff and through hearings such as these today, the Commission can document the course of Chinese legal reform, its current state, and its achievements and shortcomings in protecting human rights. This will create a baseline for monitoring the Chinese legal system and criticizing its failings in an informed and effective manner. At the same time, the Commission can create a road map of the possibilities for further reforms and the particular ways in which people and organizations in the United States and elsewhere can contribute meaningfully to legal reform and human rights in China.

I thank you again for inviting me to speak today and I look forward to answering any questions you may have.

PREPARED STATEMENT OF T. KUMAR

APRIL 11, 2002

Thank you Senator Baucus, Representative Bereuter and distinguished Members of the Congressional-Executive Commission on China for providing Amnesty International the opportunity to testify at this important hearing. We have documented human rights in China for numerous years. Our research shows that disregard for the rule of law is pervasive in China and one of the fundamental causes of the human rights abuses which occur in China. On this note Mr. Chairman, Amnesty International would like to express its appreciation for holding this hearing on this important subject.

IMPORTANCE OF THE COMMISSIONS WORK

Amnesty International considers your Commission's work as essential to the United States effort to promote and protect human rights in China. Your Commission was created in the context of granting Permanent Normal Trade Relations (PNTR) status to China as a means of maintaining vigilance to monitor human rights and to track the development of rule of law in China. Until PNTR status was granted to China, every year the Congress analyzed and debated the human rights situation in China. This annual debate proved to be an important element in highlighting gross human rights abuses in China. The PNTR debate kept China at check on its human rights practices. Your Commission was established not only to fill the role of closely scrutinising China's human rights practices but also to take effective steps to get meaningful results in the rights front. Mr. Chairman, the Commission has an obligation to keep China at check on its human rights practices and to find ways to improve its human rights practices.

REBIYA KADEER'S IMPRISONMENT

Mr. Chairman, Amnesty International would like to bring to the Commission's attention the case of Rebiya Kadeer. Ms. Kadeer, a successful businesswoman from Xinjiang China, was arrested while trying to meet with Members of the Congressional Research Service and Congressional staff. Following a trial held in secret, a Chinese court sentenced her to 8 years' imprisonment for "providing secret information to foreigners." This case highlights the dilemma the Commission is going to face when Commission staff visits China to meet with ordinary Chinese citizens. Amnesty International would urge the Commission to take note of this case and to raise it with the Chinese authorities. We also urge the Commission to raise Rebiya Kadeer's case in frank discussion with the Chinese Vice President Hu Jintao when he visits Washington later this month.

CURRENT HUMAN RIGHTS SITUATION IN CHINA

Thousands of people are arbitrarily imprisoned across China for peacefully exercising their rights to freedom of expression, association or belief. They include members of religious and spiritual groups, ethnic minorities, political dissidents, labour activists, workers and farmers, human rights defenders, and a wide range of people who were detained simply for criticizing official corruption or advocating reforms, or for attempting to defend their rights against officials' abuse of power. Some are held without charge or trial under a system of administrative detention. Others have been sentenced to prison terms after unfair trials. Torture and ill-treatment of detainees and prisoners remain widespread across the country, affecting both criminal and political prisoners. Many deaths in custody resulting from torture are reported every year. The death penalty continues to be used extensively, arbitrarily and frequently as a result of political interference. Many individuals are sentenced to death after unfair or summary trials in which convictions are based on confessions extracted under torture.

During the past year, the Chinese authorities have continued to show willingness to adhere on a pro-forma level to the international human rights regime, but they have pursued domestic policies which resulted in serious human rights violations on a large scale. These included thousands of arbitrary arrests, widespread torture, and summary and arbitrary executions.

In April 2001, the Chinese authorities launched a "strike hard" campaign against crime which resulted in a massive escalation in executions. In a 3 months period, between April and July 2001, more people were executed in China that in the rest of the world for the previous 3 years. Many of the executions are believed to have been carried out after summary trials.

The authorities have also imposed new restrictions on the media and on freedom of religion, and increased the crackdown on many groups and individuals who are deemed to be a "threat" to the "stability" or "unity" of the country. Members of the Falun Gong spiritual movement and Muslim ethnic Uighurs were the targets of particularly harsh repression.

The crackdown on ethnic Uighurs and Muslim leaders suspected of nationalist activities or involvement in "terrorist" or "illegal religious activities" has intensified in the Xinjiang Uighur Autonomous Region over the past few months. Thousands of Uighurs are reported to have been detained as a result, and some executed after unfair trials. Freedom of speech and religion also continue to be severely restricted in Tibet. Scores of Buddhist monks and nuns remain arbitrarily imprisoned, among other Tibetans serving prison sentences for the peaceful exercise of fundamental human rights.

Falun Gong practitioners have suffered severe repression, with tens of thousands of practitioners being arbitrary detained since the group was banned in July 1999 and many reportedly tortured in detention. Over 300 Falun Gong practitioners are reported to have died in custody, many of them due to torture, during the past 2 years. Members of evangelical Protestant groups and Roman Catholics who worship outside the official "patriotic" churches also continued to be the victims of a pattern of arrests, fines, and harassment. Many of those detained are reported to have been tortured. Some were sentenced to lengthy prison terms over the past few months.

Other groups were also the target of repression, including people who tried to organize free trade unions or spoke out on labour issues, political dissidents, advocates of reform, and people using the Internet to disseminate information deemed to be "politically sensitive."

"RULE BY LAW" VERSUS RULE OF LAW AND HUMAN RIGHTS

In addition to human rights violations which result from political repression, lack of respect for the law and arbitrariness in its enforcement are at the basis of gross human rights violations in China. Every year, countless numbers of people are detained without charge or trial. For those who are charged, sentences are frequently imposed after unfair trials. In many cases the verdicts passed at such trials include the death penalty.

Rule of law is still understood in China to mean "rule by law," reflecting a system in which the law is subordinate to political goals, including the defeat of perceived political threats. The judiciary lacks independence and the judicial process is subject to interference by political authorities. The vague and contradictory provisions of the law lead consistently to its arbitrary use and provide wide scope for abuse of power. The combined effects of repressive and vaguely worded criminal legislation, impunity for officials who abuse their power, and the use of a system of administrative detention mean that anyone can be detained at the whim of individuals in a position of power.

During the 1990's, the Chinese government has taken steps to address some of these issues, including for example by amending the Criminal Procedure Law (CPL). However the measures taken were far too limited to significantly change the law enforcement and justice system. In practice, they have failed to protect individuals in China against arbitrary detention, unfair trials, torture and other human rights violations. Widespread illegal practices by law enforcers, such as the use of "torture to extract confessions," which has been explicitly prohibited by law since 1980, continue unabated, and in many cases remain unpunished.

This testimony describes some of Amnesty International's concerns about legislation and practices which are at the root of widespread and serious human rights abuses in China. Further information and analysis of laws and regulations which have a human rights impact in China can be found in a number of Amnesty International reports, including "People's Republic of China—Law Reform and Human Rights," March 1997 (AI Index: ASA 17/14/97); "PRC—the Death Penalty in 1999," February 2001 (ASA 17/005/2001); "PRC—The Crackdown on Falun Gong and other so-called heretical organizations," 23 March 2000 (ASA 17/11/2000); "Torture: A growing scourge in China—Time for Action," 12 February 2001 (ASA 17/004/2001); and "China's anti-terrorism legislation and repression in the Xinjiang Uighur Autonomous Region," March 2002 (ASA 17/010/2002).

THE CRIMINAL PROCEDURE LAW

In March 1996, China's legislature, the National People's Congress (NPC), passed substantial amendments to the Criminal Procedure Law (CPL)—the basic law which has governed the criminal justice process in China for the previous 16 years. The revision of this law was the most significant legal development in China since 1979, when the CPL and the Criminal Law were adopted. The 1979 CPL had been the basis of widespread human rights violations, including long-term detention without charge, torture and ill-treatment of detainees, and unfair trials.

While the 1996 amendments improved it provisions in some respects (see ASA 17/47/97, cited above), they also increased the potential for incommunicado, lengthy and arbitrary detention and related abuses in the criminal justice system. The revisions altogether left the law far short of international fair trial standards.

Over 4 years of implementation of the 1996 revisions to the CPL have confirmed Amnesty International's initial concerns about these features of the revised law. Some of these are examined below.

LENGTHY DETENTION WITHOUT CHARGE, TRIAL OR CHALLENGE

Under international law, "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release." This is one of the basic safeguards against arbitrary arrest or detention and the word "promptly" is taken to mean "a few days." There is no such safeguard in Chinese law.

The Human Rights Committee has stated that "[p]re-trial detention should be an exception and as short as possible" and must be lawful, necessary and reasonable in the circumstances. The Committee has also held that suspicion that a person has committed a crime is not sufficient to justify detention pending investigation and indictment.

The CPL revisions increased the maximum permitted length of detention (juliu) without charge for ordinary criminal suspects, from 10 days to 14 days (article 69) for some categories of suspect up to 37 days, and potentially indefinitely for others. CPL revisions also extend the period of detention for investigation by the procuratorate after charge from 3 months to 7 months. This may be extended to 9 months if the procuratorate orders the police to carry out "supplementary investigation" or, as in the 1979 CPL, indefinitely in "especially major and complex" cases, with the approval of the National Peoples Congress Standing Committee.

When the CPL was revised, one form of administrative detention known as "Custody and Investigation" (or Shelter and Investigation—in Chinese shourong shencha), which caused widespread human rights violations, was abolished. However, instead, categories of people who previously fell within the scope of Custody and Investigation were introduced into the revised CPL in a number of ways, including:

(a) As special categories of suspects who may be detained without charge for up to 37 days (Article 69).

(b) As those "who do not tell their true name or address, whose status is unclear," for whom the time limits on detention start only from the time "when their status is clarified."(Article 128 para. 2).

Meanwhile, outside the criminal justice system, the provisions on "Custody and Repatriation" (shourong qiansong) still provide as much or more scope for administrative detention as "Custody and Investigation." In addition, another form of administration detention, "Re-education Through Labour," which is imposed as a punishment by executive authorities, continue to be used extensively (see below, the section on Administrative Detention).

In addition to "detention" (juliu), the CPL sets out two forms of pre-trial restriction or detention which the police may impose on their own authority, without charge or judicial review. These are: "Supervised Residence" (jianshi juzhu), which is comparable to detention, and "Taking a Guarantee and Awaiting Trial" (qubao houshen).

These may be imposed on any "criminal suspect" (article 51) including those against whom there is insufficient evidence to justify arrest (article 65). These "coercive measures" may also be imposed when pre-trial investigation by the police, procuratorate or the courts cannot be concluded within the legal time limits (article 74). Whereas the revisions to the CPL stipulated time limits for "Supervised Residence" and "Taking a Guarantee and Awaiting Trial" of 6 and 12 months respectively, subsequent interpretations have extended the limits to 18 months and 3 years respectively.

On paper, "Supervised Residence" may appear preferable to detention, but in practice it is being widely used as a means of detaining "suspects" incommunicado outside regular detention centres away from the oversight of existing supervisory mechanisms. Torture is frequently the result.

"Taking a Guarantee and Awaiting Trial," a form of bail, is the least restrictive of all pre-trial "coercive measures." Detainees, their near relatives or legal representatives have the right to apply for it, but there is no appeal process if their request is rejected. Furthermore, certain categories of suspect cannot apply for it, including those suspected of crimes "endangering national security." This includes the majority of prisoners of conscience and political prisoners known to Amnesty International.

Under the revised CPL, the police, procuratorate or the courts must rescind or alter "coercive measures" if they discover they have been "inappropriately" taken (article 73). However detainees or their representatives may contest their detention or restriction only on the basis that it has exceeded the stipulated time limits (article 75). Even then, the remedy may simply be a transfer to another type of restriction or detention rather than release.

ACCESS TO FAMILIES AND LEGAL REPRESENTATIVES—LIMITED, DISCRETIONARY AND CONDITIONAL

Under the revised CPL the police should inform the family of a detainee about their detention or arrest and place of detention within 24 hours, except where it "would hinder the investigation" (articles 64 and 71). In practice, communication with the family is frequently denied until the detainee is brought to trial or sentenced.

Provisions in the 1996 CPL concerning access to lawyers are an improvement over the 1979 CPL but still fall short of international standards. Guaranteed access to lawyers and legal representatives is one of the strongest protections against torture for any detainee. However, such access during the investigation stage is not a guaranteed right to all suspects and remains firmly at the discretion of the investigating authorities. While this situation continues, there is unlikely to be major progress in the fight against torture in China. In May 2000, the U.N. Committee against Torture recommended that the Chinese government consider abolishing the need to apply for permission, for any reason, before a suspect can have access to a lawyer whilst in custody.

Article 96 of the revised CPL states that a suspect "may appoint a lawyer to provide legal advice or to file petitions and complaints on his behalf" after the first session of interrogation by the "investigative organ," or from the day the suspect is subjected to one of the forms of detention or restriction provided by the law ("compulsory measures"). Appointed lawyers have a limited role at this stage: they can demand to be told the offense imputed to the suspect, can apply for "Taking a Guarantee and Awaiting Trial" once the suspect is formally arrested (charged), and "may" meet the suspect in custody "to enquire about the case." Representatives of the investigative organs may be present at such meetings.

In cases "involving State secrets" prior approval of the investigative organs is required for a suspect to appoint a lawyer or before any meeting between lawyer and client takes place. The vague and potentially all encompassing definition of "state secrets" has meant that this provision has been heavily used to deny access to legal

representation in these cases. This has continued even after the term was clarified in a joint communique in January 1998 which also spelt out that no approval was required in any other cases.

Formal "arrest" (charge) is followed by a period of "investigation." At the investigation stage (which may last for months before procurators decide whether or not to prosecute the case), detainees are not entitled to free legal assistance. This only becomes a right much later on, "at least 10 days before" the trial, and only for some categories of detainees. In practice, therefore, many detainees will not have the means of accessing legal assistance for long periods after being taken in custody. Regulations from the Ministry of Public Security stipulate that the police must inform suspects of their rights to appoint a lawyer at this stage, but officials admit this is often disregarded and most suspects are unaware of the law.

In practice, very few detainees have a legal representative during the investigation stage of detention. Incomplete statistics from the Ministry of Justice for 1997 and the first half of 1998 show that lawyers were appointed at this stage in only 16.9 percent and 17.7 percent of cases respectively. Some areas report less than 10 percent .

Although an improvement on the 1979 CPL, the provisions concerning access to lawyer in the revised CPL still mean that detainees can be held incommunicado for weeks or months without guaranteed access to a defense lawyer. They also place limits on the role lawyers can play in defending their clients.

LAWYERS INTERVENTION—ADDITIONAL PRACTICAL OBSTACLES

In practice, State institutions and investigators themselves have used a wide range of additional expedients to curtail and deny suspect's access to lawyers. They have been assisted by ambiguities in Article 96 of the revised CPL, the lack of definition of "investigative organs," "first interrogation," and "compulsory measures."

State organs authorized to detain suspects have sought to exclude themselves from the remit of the law. The Customs authority, for example, works closely with the Ministry of Public Security investigating drug trafficking cases and smuggling cases which have been a major focus of a corruption crackdown in recent years. The Custom authority has the legal power to "Detain and Transfer" (kouliu yisong) suspects in smuggling cases. In a recent notice the authority stated that such detention was not one of the "compulsory measures" under the CPL, so requests from lawyers to see clients during Detention and Transfer should be denied.

Through local "internal" implementing regulations, limits have been set on the duration and number of meetings allowed between lawyers and clients. The police in several regions reportedly implement a complicated approvals process for all requests concerning access to lawyer, so that the Ministry of Public Security regulations that a lawyer's visit should be approved within 48 hours, or 5 days in "complex cases," are not followed in practice. In several recent cases, lawyers appointed by a suspect's family have been obstructed with many different excuses before being informed several weeks later that the suspect "does not want to see a lawyer." They have no power to verify or challenge this response. Lawyers seeking access away from their hometown are particularly susceptible to these blocking tactics. Lawyers have also complained that there is completely inadequate provision of meeting rooms in many detention centres, resulting in costly waiting and delay, and that, when they attempt to exercise their functions to apply for medical bail or to complain at detention beyond legal time limits, they frequently receive no reply.

As for pursuing allegations of torture, one defense lawyer has stated: "The use of torture to obtain a confession is something defendants often raise, but it puts us in a very delicate situation since we need facts and evidence to back up these claims . . . but it is very hard to gather evidence because it is almost impossible to get access to clients at these times."

In one high profile case which demonstrates the occupational hazards for defense lawyers, a rural Binhai County Court sentenced a young lawyer to 1 year imprisonment suspended for 2 years for the new crime of "interfering with witnesses." Liu Jian, from Nanjing City was prosecuted for his efforts to assist a client who claimed that his confession to bribe taking had been extorted through torture. Liu Jian was denied meaningful access to his client until 1 week before the trial. Then he found major discrepancies between his client's account and the details of the crime presented in the indictment. He tracked down many witnesses to prove the prosecution's distortion, but most failed to appear when the trial began on 13 July 1998. They had reportedly been threatened against interfering in this high profile corruption case. There was no halt in the trial when the defendant retracted his confession. Instead it was reinstated on the basis that he had failed to bring up allegations of torture during his 4 months of pre-trial detention.(In fact the defendant had

raised the allegations the first time he had met his lawyer out of earshot of prosecutors). The court reportedly also passed a heavier sentence as his allegations of torture were considered to be evidence of a "poor attitude in acknowledging guilt" (renzui taidu buhao). The prosecutor immediately detained Liu Jian on accusations of "deliberately inducing witnesses to give false evidence" and "knowingly presenting false testimony." During 5 months' pre-trial detention Liu Jian reported he had been denied contact with his family and was worn down by constant interrogation. He was beaten until his mouth filled with blood for refusing to confirm his interrogators version of events. Eventually he read to camera a statement they prepared for him and chose to plead guilty rather than chance justice there.

Since the revised CPL gave an enhanced role to lawyers during the investigation period, there have been numerous reports of illegal detention and torture of lawyers across the country. Defense lawyers seeking to prove the innocence of their clients have also been prosecuted for falsifying evidence, ill-treated and denied due process even in cases attracting considerable public attention in Beijing. There have been calls for the reinstatement of provisions granting trial lawyers immunity from prosecution which were cut from the original draft of the 1997 Lawyer's Law.

PROVISIONS ON TORTURE—INCOMPLETE EXCLUSION OF EVIDENCE OBTAINED THROUGH TORTURE

The revised CPL repeats provisions in the 1979 law prohibiting the use of torture to extract statements:

Article 43 (32 in 1979 CPL). . . The use of torture to coerce confessions and the gathering of evidence by threats, enticement, deceit or other unlawful methods are strictly prohibited.

Article 46 (35 in 1979 CPL). . . In cases where there is only the statement of the defendant and there is no other evidence, the defendant cannot be found guilty and sentenced to criminal punishment.

The revised CPL still does not specifically exclude the use as evidence in court of confessions or statements extracted through torture as required under the Convention (article 15). In recent years, interpretations of the law and procedural regulations have progressed and then retreated on this issue. Stipulations currently in effect are inconsistent and confusing. None of them exclude all types of statements extracted through all types of torture. Nor do they comprehensively bar the use of all evidence derived from such statements.

Before revisions to the CPL, on March 21 1994, the Supreme People's Court (SPC) adopted "Specific Regulations on Criminal Adjudication Procedures," which stipulated:

. . . Any witness testimony, victim's statement, defendant's confessions verified to have really been (jing chazheng queshi) obtained through torture to extract a confession, threats, luring, deceit, or other illegal methods, cannot be used as evidence (buneng zuowei zhengju shiyong).

This has been superseded by what appears to be a weaker conditional provision in the SPC "Decision on Specific Issues in the Implementation of the CPL" (effective 8 September 1998) which stipulates only that such statements: ". . . cannot become the basis for determining a case (buneng zuowei ding'an de genju)."

Several legal sources in China maintain that this does not even amount to full exclusion of the types of coerced statements listed. They may be still be used to "supplement" the major evidence used to determine a case. Moreover, material evidence derived from such coerced statements would not be excluded either.

The Supreme Peoples' Procuratorate followed the same language as the SPC in their "Rules on Implementing the CPL" (effective 18 January 1999):

265: Criminal suspects' confessions, victims' statements, and witness testimonies collected through torture to extract a confession (xingxun bigong), or threats, enticement, cheating and other illegal methods cannot become the basis for a criminal charge (buneng zuowei zhikong fanzui de genzhu).

In practice there are also numerous practical obstacles to such verification. Sources also highlight that, however significant this SPC interpretation may be, it only binds judicial organs and does not directly bind administrative organs like the public security apparatus. Significantly, numerous regulations from the Ministry of Public Security, which is responsible for the majority of State officials involved in interrogation, do no more than repeat the general prohibitions against torture in CPL article 43.

Other experts maintain that, a confession or statement extracted through torture may also be legally "recollected" for use as evidence at trial. That is, if a suspect agrees to repeat statements which were initially extracted through torture, these may be admissible.

There are growing calls in China for full and firm exclusion of evidence extracted by torture and other illegal means. Commentators argue that without it efforts to eradicate torture have little hope of lasting success.

Amnesty International believes China's Criminal Procedure Law should be revised as a matter of urgency to explicitly exclude the use of all evidence extracted through torture of any kind. The same exclusions should also apply in any determination of administrative punishment.

NO RIGHT TO SILENCE OR TO AVOID SELF-INCRIMINATION

Amnesty International believes the right of an accused to remain silent during the investigation phase and at trial is inherent to the presumption of innocence and an important safeguard of the right not to be compelled to confess guilt or testify against oneself. Currently the CPL states:

Article 93: When interrogating a criminal suspect, the investigators shall first ask the criminal suspect whether or not he has committed any criminal act, and let him State the circumstances of his guilt or explain his innocence; then they may ask him questions. The criminal suspect shall answer the investigators' questions truthfully, but he shall have the right to refuse to answer any questions that are irrelevant to the case.

Legal analysts in China argue that the duty to answer fully and truthfully puts the suspect at great disadvantage: it legitimizes the investigator's use of ill-treatment and demonstrates that the presumption of guilt is still the reality. The established practice of exercising "leniency to those who confess, severity to those who resist" (tanbai congkuan, kangju congyan) has a similar effect.

TRIAL PROCESS AND PRESUMPTION OF INNOCENCE

The CPL revisions introduced some positive changes in the provisions related to the trial process. Despite that, however, the revised CPL still fails to conform to international standards for fair trial, including the right to a defense lawyer at all stages of the criminal process, the right to have adequate time and facilities to prepare the defence, the right to be presumed innocent and the right to a public trial by an independent and impartial tribunal.

As noted earlier, the right to defense is still limited during pre-trial detention and only some detainees have a clear entitlement to free legal assistance "at least 10 days" before the trial. It is also at this time that defendants are entitled to receive a copy of the indictment and have full access to the evidence against them. In many cases, 10 days is likely to be grossly insufficient to prepare an adequate defense. In contrast, the police and procuracy may have had months to buildup evidence against the accused.

In addition, the revised law still fails to guarantee the defense's right to examine prosecution witnesses and to call new witnesses in court. Witnesses' testimony can still, as previously, be presented in writing (Article 157) and, when witnesses are called in court, cross-examination is subject to approval by the chief judge (Article 156). This may therefore be denied at the chief judge's discretion. As to the right to call new defense witnesses in court, this is at the discretion of the trial court (Article 159).

The revised law also fails to guarantee public trials in all cases: it retains a clause of the original law which allows cases involving "state secrets" to be tried in camera (Article 152). In such cases, only the verdict is to be announced "in public," which in practice usually means in the presence of close relatives of the accused or other people selected by the authorities.

When the amendments to the CPL were passed, some commentators stated that the law now included the presumption of innocence—a fundamental principle of fair trial in international law. This assumption was based on the inclusion of a new provision in the law, which reads: "No one shall be determined guilty without a verdict according to law by a people's court" (Article 12). This article, however, does not speak of presumption of innocence. All it says is that the only legal means to "decide" (queuing) guilt is a verdict by a court, and by extension, that only the courts have this power. According to some experts, the inclusion of Article 12 in the revised law is related to controversy about a procedure known as "exemption from prosecution" which, under the 1979 CPL, gave the procuracy the power to determine guilt. This procedure has been modified in the revised law.

Article 12, however, does not touch upon questions which are central to the presumption of innocence, such as the burden and standards of proof. One article in the revised law, retained from the 1979 CPL, appears in fact to place the burden of proof on the defense. It reads, in relevant part: "The responsibility of a defender is, on the basis of the facts and the law, to present material evidence and opinion

proving that the criminal suspect or defendant is innocent, that his crime is minor, or that he should receive a mitigated punishment or be exempted from criminal responsibility. . . " (Article 35, revised CPL; Article 28 in the 1979 CPL). While this article can be interpreted in various ways, the law still does not give the defendant the benefit of the doubt.

Some moves were made in the revised CPL in the direction of presumption of innocence, notably through a change in the terminology used to designate detainees—as "suspects" and "defendants," rather than as "criminals" prior to the revisions. However, the pre-trial detention process in China is still heavily weighted against detainees, denying them many of the rights which are associated with the presumption of innocence.

PROVISIONS ON THE DEATH PENALTY

Under the revised CPL, all defendants facing the death penalty should receive notice of the trial and of the right to a defense lawyer, as well as a copy of the indictment, at least 10 days before the trial starts. Those who have not hired a defense lawyer have the right to have one appointed for them at that stage by the court hearing the case (Articles 34 and 151). While this is an improvement over the 1979 CPL, this still leaves very little time to prepare an adequate defense in death penalty cases. International standards require that people charged with offenses for which the death penalty may be imposed be given "adequate legal assistance at all stages of the proceedings."

The revised CPL also stipulated that all death sentences have to be approved by the Supreme People's Court. In presentations to U.N. bodies, Chinese diplomats presented this as a significant safeguard against overuse of the death penalty in China. However, subsequent legal interpretations issued by the Supreme People's Court (SPC) have delegated powers of final approval back down to the High People's Courts and the Military Courts for the majority of crimes liable to the death penalty. Some legal analysts in China have described this as unconstitutional as it nullifies an additional safeguard for defendants set out in national law.

The delegation to the high courts of the power to approve death sentences means that the procedure for approval of the death sentence is usually amalgamated with that for appeal or review of the case, also carried out by the high courts in most cases. This indeed amounts to nullify the safeguard initially provided in the revised CPL. In addition, the revised CPL includes no mechanism allowing prisoners sentenced to death to seek pardon or commutation of the death sentence, which is an internationally recognized right.

International standards generally require that the most careful legal procedures and all possible safeguards for the accused be guaranteed in death penalty cases, including the right to a fair and public hearing by a competent, independent and impartial tribunal, the presumption of innocence, the right to have adequate time and facilities to prepare the defence—including, as noted above, the right to have adequate legal assistance at all stages of the proceedings—and the right to seek pardon or commutation of the sentence. These safeguards, however, remain unavailable in China.

The revised CPL retains a provision which bans public executions, but it still fails to prohibit the public display and humiliation of prisoners sentenced to death, which is a common practice. Prisoners sentenced to death are frequently paraded in public—with their hands tied behind their back, a placard around their neck listing their names and crimes, and their head forced down by guards—at "mass sentencing rallies" or in parades of trucks through the streets on their way to the execution ground. In May 2000, Chinese government representatives reported to the U.N. Committee Against Torture that: "China prohibits the practice such as parading in the streets the criminals to be executed, hanging big character name posters on criminals or tying them up with ropes. The people's courts at all levels have done a great deal of work to reduce and eliminate such practice. At the moment such phenomena no longer exist. Should they occur in some individual places, they will be seriously dealt with according to law."

However, whilst several regulations indeed "outlaw" this practice, it remains common and is resorted to particularly frequently as a means of warning potential offenders during the campaigns against crime periodically launched by the government. Some Chinese legal scholars have advocated banning this practice in national law, but no consideration appears to have been given to this suggestion so far. The revised CPL also fails to include provisions allowing prisoners sentenced to death to see their family before execution, which has also been advocated by some legal scholars in China. This is only granted at the discretion of the authorities.

Amnesty International is also concerned at other aspects of the treatment of prisoners sentenced to death, which constitute cruel, inhuman or degrading treatment. It is common practice for condemned prisoners to be kept in shackles (hands and feet) at least from their first trial until execution. They are frequently subjected to a particularly cruel form of shackling hands and feet together (termed dilao and "dragon board") which clearly inflicts severe pain and amounts to torture. Amnesty International has also received reports of condemned prisoners being shackled, arms and legs splayed, to bed boards for many months awaiting execution.

The use of leg irons is prohibited by international standards and the prolonged use of other instruments of restraint is also considered in some circumstances to amount to ill treatment. Prison and detention centre regulations in China specifically exclude those awaiting execution from time limits on the use of shackles and other restraining instruments and solitary confinement.

ADMINISTRATIVE DETENTION—RE-EDUCATION THROUGH LABOUR

The system of "re-education through labour"—a form of administrative detention imposed as a punishment—is based on a Decision passed by the National People's Congress in 1957, which was later updated with new regulations. This legislation remains in force. According to a definition given by an official legal newspaper, "re-education through labour" is a punishment for actions which fall "somewhere between crime and error."

"Re-education through labour" involves detention without charge or trial for up to 3 years, renewable by 1 year, in a forced labour camp. It is imposed by local government committees usually presided over by police officials. It applies to people who are regarded as troublemakers or those accused of committing minor offenses which are not regarded as amounting to "crime" and which therefore are not prosecuted under the criminal justice system. Detainees liable to receive terms of "re-education through labour" have no right of access to a lawyer. Under the regulations on "re-education through labour," people who can be subjected to this punishment include those who are classified as being "counter-revolutionary," "anti-Party" or "anti-socialist," as well as people who "behave like hooligans," such as by engaging in fights, smuggling or prostitution, or by disturbing public order or "the order of production" in other ways.

According to official statistics, in 1996 there were 200,000 people in "re-education through labour" camps in China. By early 2001, the number had increased to 260,000. Over the past 2 years, the use of this form of detention has increased particularly against Falun Gong practitioners and during the "strike hard" campaign against crime launched by the Chinese authorities in April 2001. Other victims include political dissidents, members of religious groups and a wide range of people accused of "disturbing public order," including prostitutes.

One argument frequently used by Chinese officials to justify "re-education through labour" is that this punishment does not have the stigma of a criminal punishment and that it involves less stringent conditions of detention than a term of imprisonment. In reality, however, the conditions of detainees in labour re-education camps are often similar to those of convicted prisoners, and they often face the same difficulties finding employment after their release.

If one compares "re-education through labour" with criminal punishments, one may also question the justification for imposing a punishment varying from 1 year to 3 years of detention in a forced labour camp in cases which are not considered serious enough to be prosecuted and tried under the Criminal Law, whereas those convicted of "crimes" under the Criminal Law can receive light punishments such as "control" (which involves supervision within the community for periods varying from 3 months to 2 years), or "criminal detention" (which involves between 15 days and 6 months of detention).

THE MARTIAL LAW

The Martial Law of the PRC was promulgated on 1 March 1996 by the Standing Committee of the NPC. It provides that martial law can be imposed, either locally or in the whole country, in response to situations vaguely defined as "turmoil, riot or disturbance" where "only emergency measures can help preserve social order and protect the people's lives and property."

This law gives the national and local governments the power to suspend constitutional rights during such a State of emergency. It provides that the "martial law enforcement institutions" can ban or restrict assembly, parades, demonstrations, public speeches and "other group activities." They can also ban strikes, impose press censorship, control correspondence and telecommunications, and ban "any activity against martial law."

The personnel in charge of executing martial law—which can be the police, the People's Armed Police, or military units—are given wide powers to carry out arrests under the Martial Law. They can detain and search people violating curfew regulations, "criminals or major suspects endangering State security or undermining social order," people who obstruct or defy "the implementation of martial law tasks," and basically anyone suspected of opposing martial law.

Martial law enforcement personnel also have the power to use "police instruments" to disperse by force crowds or groups of people involved in "illegal" gatherings or demonstrations, or causing "disruption of traffic order," and to immediately detain the organizer or individuals who do not obey orders in such situations.

The Martial Law further specifies that, for those detained or arrested during martial law, the procedures and time limits provided by the Criminal Procedure Law for detention or arrest will not apply, except for the procedure which requires that "arrest" (charge) be approved by the procuracy.

The law allows martial law enforcement personnel to use "guns and other weapons," "if police instruments prove to be of no avail," in various situations where violence occurs or there is a threat of the use of violence. This includes situations where a person detained, or transported under escort, commits a physical assault or "attempts to get away." The law sets no limit on the amount of force to be used in such situations and does not specify that force must be used only when strictly necessary and must be proportionate to the threat of violence. Amnesty International is concerned that the Martial Law permits restrictions to the exercise of basic rights which go beyond those envisaged under international standards. The declaration of a State of emergency is an expression of the rule of law, not the abrogation of it, and emergency measures must not be introduced as a means of suppressing legitimate rights.

International standards set strict limits on the scope of restrictions which may be enforced under a State of emergency and specify that such restrictions may only occur "in time of a public emergency which threatens the life of the Nation and the existence of which is officially proclaimed." The Martial Law of the PRC goes far beyond this by providing that martial law, and the restrictions it involves, can be imposed in response to a local situation of "turmoil, riot or disturbance."

Furthermore, some rights are so fundamental that they can never be suspended, even during a State of emergency. Under international standards, the rights which can never be derogated from include the right to life, the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion. In Amnesty International's experience, violations of the non-derogable rights to life and freedom from torture often occur during an emergency when security forces are given license to maintain public order with no effective executive, legislative or judicial control. The Martial Law of the PRC gives wide powers to the security forces and may lead to such violations.

International standards also limit the restrictions that can be put on all other rights during a state of emergency. They specify that the exercise of rights other than the non-derogable rights can be suspended by a State only "to the extent strictly required by the exigencies of the situation" and as a temporary measure. The Martial Law of the PRC does not contain any such limitations. Its provisions are so vague that they would permit the arbitrary suspension of rights, such as the right not to be arbitrarily detained, the right to fair trial, and the rights to freedom of expression, association and peaceful assembly.

THE CRIMINAL LAW—RECENT AMENDMENTS CONCERNING PROVISIONS ON TERRORISM

Amnesty International is concerned about many provisions of the Criminal Law, notably provisions concerning "state security" and "state secrets" offenses, which are frequently used to imprison people for the peaceful exercise of fundamental human rights, and provisions which include the death penalty as a punishment for over 60 offenses, including many non-violent crimes. These concerns have been examined in other reports and this testimony describes only recent amendments made to the Criminal Law concerning its anti-terrorism provisions.

On 29 December 2001, the Standing Committee of the National People's Congress (NPC—China's legislature) adopted amendments to the Criminal Law. The stated purpose of the amendments, which entered into force the same day, was to "punish terrorist crimes, ensure national security and the safety of people's lives and property, and uphold social order."

Prior to the adoption of the amendments, the Criminal Law already included provisions punishing some "terrorist" crimes in a section of the law dealing with

"Crimes of Endangering Public Security." Most of the amendments adopted in late December 2001 modify existing articles in that section of the law.

The main changes brought about by the amendments are described below, together with Amnesty International's concerns about some of the amendments or existing provisions:

• *Two amendments have been made to Article 120 of the Criminal Law.* The first one increases the punishments for people who "organize or lead a terrorist organization." Prior to the amendments, this was punishable by between three and 10 years' imprisonment—this has now been increased to between 10 years' and life imprisonment. Under this article, "active" participation in a "terrorist organization" is punishable by between three and 10 years' imprisonment, and "other participants" can be punished by up to 3 years' imprisonment. The second amendment to this article is the addition of a new clause punishing those who "fund terrorist organizations or individuals engaging in terrorist activities." This is punishable by penalties ranging from fines to maximum 5 years' imprisonment, except "when the circumstances of the case are serious," in which case 5 years' imprisonment is the minimum punishment. No maximum is specified.

Amnesty International is concerned that the provisions of Article 120 make it a criminal offense to be a member, leader or organizer of a "terrorist organization" even if the individual does not commit any other illegal act. The term "terrorist organization" is not defined in the law and could be interpreted as referring to peaceful political opposition or religious groups.

Amnesty International is also concerned that the new clause added to Article 120 does not specify a maximum punishment, thus potentially making the "funding" of "terrorist organizations" or "individuals engaging in terrorist activities" liable to the death penalty, as other provisions of the law examined below.

• *Four of the amendments add new provisions in Articles 114, 115, 125 and 127 of the Criminal Law* to punish the "dissemination," or "illegal manufacturing, trading, transporting or storing," or "the stealing or seizing or plundering," of "poisonous or radioactive substances or contagious-disease pathogens."

This is in addition to existing provisions in these articles which punish "causing fires, floods or explosions, or using other dangerous means that harm public security" (Article 114), or the same acts as in Article 114 that "lead to serious injury or death or cause major damage to public or private property" (Article 115), or the illegal manufacturing, trading, transporting or storing of firearms, ammunition or explosives (Article 125), or the stealing or seizing or plundering of firearms, ammunition and explosives (Article 127).

The punishments provided in these articles remain unchanged. Articles 115, 125 and 127 all provide punishments ranging from varying terms of imprisonment to the death penalty. Therefore, the new range of offenses related to the use of "poisonous or radioactive substances or contagious-disease pathogens," which have been added in articles 115, 125 and 127, are also liable to be punished by death, including for example the illegal transporting or storage of such substances.

Amnesty international is concerned that the amendments to these articles enlarge the scope of the death penalty in China.

• *Two amendments have been made to Article 191 of the Criminal Law.* This article punishes illegal financial operations or gains related to a range of crimes, including narcotics and smuggling crimes. One of the amendments has now added "terrorist crimes" to this range of crimes. The second amendment provides that, when such crimes are committed by a "work unit," punishments will now range between five and 10 years' imprisonment if the "circumstances are serious"—i.e. a heavier punishment than previously provided.

• *The last amendment is a new clause added to Article 291 of the Criminal Law.* The existing provisions in Article 291 punish people who "disturb social order" by gathering in public places, blocking traffic, or obstructing agents of the State from carrying out their duties; the punishments for these offenses "if the circumstances are serious" range from "public surveillance" to maximum 5 years' imprisonment.

The new clause added to Article 291 provides that "whoever seriously disturbs social order by disseminating false explosive, poisonous or radioactive substances or contagious-disease pathogens, or by fabricating threats or information about an explosion or biological or radioactive threat, or by knowingly disseminating fabricated threats or messages" is to receive punishments ranging from 'public surveillance' to 5 years' imprisonment, or "if serious consequences have been caused" a sentence of minimum 5 years' imprisonment. No maximum sentence is specified.

Amnesty International is concerned that the language used in this article is vague, leaving the door open to wide interpretation. It is not clear what the "dis-

semination" of "false" explosives or substances or of "fabricated threats and messages" might mean, nor is it clear what would constitute "serious consequences." The vagueness of these provisions therefore opens the possibility that this clause may be used to punish people peacefully exercising their right to freedom of expression. This concern is increased by the fact that the provisions of Article 291 have been frequently used in the past to imprison people criticizing the government or expressing their views through peaceful gatherings or demonstrations. There are indications that the new provisions in Article 291 may also be interpreted very broadly. On 24 December 2002, in a report on the draft amendments, the official Xinhua news agency stated that "even joking about putting anthrax powder in a letter can lead to a 5-year prison sentence under a new amendment to China's Criminal Law." This was referring to the new provisions in Article 291, which the news agency cited.

Amnesty International is also concerned that the failure to specify a maximum punishment in the amendment to Article 291 raises the possibility that those convicted of the offenses specified may be sentenced to death if this is deemed to have caused "serious consequences."

Overall, the vague wording of several articles of the law, the lack of definition of "terrorism," "terrorist organization" or "terrorist crime," which are cited in several provisions, and the failure to specify a maximum punishment in some of these provisions give rise to concern that:

- The lack of precision creates uncertainty about what conduct is prohibited;
- These provisions may criminalize peaceful activities and infringe unduly upon other rights such as freedom of expression and association;
- The death penalty may be applied as a punishment under most of the articles cited above.

While the word "terrorism" is used frequently and its practice is generally opposed, there is no universally accepted definition of the word in general use or in treaties and laws designed to combat it. Frequently, the word indicates the user's attitude to a certain crime. States and commentators describe as "terrorist" acts or political motivations that they oppose, while rejecting the use of the term when it relates to activities or causes they support.

In a recent report, the U.N. Special Rapporteur on terrorism noted that the issue of "terrorism" has been "approached from such different perspectives and in such different contexts that it has been impossible for the international community to arrive at a generally acceptable definition to this very day." The Special Rapporteur also pointed out that "the term terrorism is emotive and highly loaded politically. It is habitually accompanied by an implicit negative judgment and is used selectively."

There are a number of U.N. conventions prohibiting specific acts, such as hijacking or bombing, which specify in detail various crimes which are commonly understood as "terrorist" crimes. However, recent attempts to finalize the U.N. Convention on "terrorism" stalled, inter alia, because of disagreements about the definition.

In the case of China, Amnesty International is concerned that the anti-terrorist legislation may be used in the context of the government's ongoing repression of "ethnic separatist activity," particularly in the XUAR. In early March 2002, a deputy to the Ninth National People's Congress called on the legislature to set up an anti-terrorism legal framework as soon as possible and stated in this context: "To safeguard China's sovereignty and territorial integrity, we have to fight separatists, international terrorists and religious extremists."

The Chinese government's use of the term "separatism" refers to a broad range of activities, many of which amount to no more than peaceful opposition or dissent, or the peaceful exercise of the right to freedom of religion. Since the 11 September events , the Chinese authorities have tried to justify their harsh repression of Muslim ethnic opponents or independent religious leaders in the XUAR by claiming they were linked with international "terrorism."

While there have been some incidents of bombings in the XUAR over the past 10 years and a few officially reported assassinations which are alleged to have been politically motivated, the government has so far failed to provide convincing evidence that those allegedly involved in these incidents had links with international terrorist groups. Furthermore, the number of such incidents is relatively small and the government's campaign of political repression in the region has gone far beyond the search for people involved in using this kind of violence for political ends.

In the continuous political crackdown in the XUAR over the past 10 years, the authorities have detained tens of thousands of people, held many of them in complete secrecy, preventing all independent investigation into the cases, while periodically releasing selective information about a few of those who have been prosecuted.

Many of those prosecuted have been held incommunicado for months on end, subjected to torture, and sentenced after grossly unfair trials, most of these either held in secret or in front of large crowds during "mass sentencing rallies." In this context, there are reasons to doubt the credibility of the government's information about those it accuses of involvement in "terrorist" activity.

Amnesty International considers that the measures taken by states to protect their population from violent criminal acts must be implemented within a framework of protection for all human rights, and should not be used as a pretext to curtail fundamental freedoms and crack down on peaceful opposition or dissent.

INCREASED REPRESSION IN THE XINJIANG UIGHUR AUTONOMOUS REGION SINCE 11 SEPTEMBER 2001

"Xinjiang is not a place of terror." "By no means is Xinjiang a place where violence and terrorist accidents take place very often." (Statements by Wang Lequan, Secretary of the XUAR Communist Party Committee, and Abdulahat Abdurixit, Chairman of the XUAR Regional Government, in Urumqi on 1 September 2001)

These statements, by the two leading officials of the XUAR, were reportedly made on 1 September 2001, when they met a group of Chinese and foreign reporters following the opening ceremony of the Urumqi Fair. Wang Lequan also told the reporters that Xinjiang was stable and that its stability had never been affected by the activities of "national separatists and religious extremists."

Just a few weeks later, however, Chinese officials were painting quite a different picture. Following the 11 September attacks in the USA, they placed emphasis on the "terrorist" threat posed by "separatists" in the XUAR, stating that the latter had close ties with international terrorist forces, suggesting that "separatism" and "terrorism" were one and the same thing, and calling for international support in their fight against domestic terrorism.

The crackdown on suspected government opponents was intensified in the XUAR soon after 11 September 2001. It further intensified in December 2001, following a national conference on 'political and legal work' held in Beijing on 4 December 2001, which made the crackdown on "ethnic separatist forces, religious extremist forces and violent terrorist forces," as well as the Falun Gong spiritual movement, the first of four main priorities in "political and legal work" for the year 2002.

The authorities also imposed new restrictions on freedom of religion, closed down mosques which were deemed to have a "bad influence" on young people, and subjected the Islamic clergy to intensive scrutiny and "political education." Such "political education" campaigns, which are reminiscent of those held during the Cultural Revolution, aim both to force participants to follow closely the party's dictates and to identify potential opponents and dissenters.

The search for dissenters through the same type of campaign was extended in early 2002 to other sectors of society in the XUAR, including cultural and media circles. Official sources made clear that the "struggle against separatism" is wide-ranging and encompasses repressing all potential dissent and opposition activities, including the peaceful expression of views via poems, songs, books, pamphlets, letters, or the Internet.

Reports on various aspects of this crackdown are cited below. Some of the official reports mention arrests, including the arrest of people accused of "terrorist" activities. However, they give no supporting evidence of such activities. In fact, hardly any "terrorist" acts are reported to have been perpetrated in the XUAR for the past several years. According to a Chinese government report published on 21 January 2002, which lists "terrorist" incidents in the region over the past 10 years, the most recent explosion allegedly carried out by a "terrorist" group took place in April 1998 in Yecheng and the only other recent incident of violence imputed to "terrorists" since 1999 is the murder of one court official in Kashgar prefecture in February 2001.

In December 2001, the XUAR Party leader, Wang Lequan, was also reported to have said that, "due to effective preventive measures," there had been no "terrorist activities" in the region since the war in Afghanistan started after 11 September. He was referring specifically to six types of "terrorist activities," including some which few countries would recognize as terrorist activities, such as "the staging of riots" and "the perpetration of beating, smashing and looting." The latter is an expression used in China during the Cultural Revolution, which in the current Criminal Law refers to offenses committed during rioting .

One example of such "terrorist activities" is given in the government's report cited above. Among the incidents it claims to have been perpetrated by "terrorist organizations" is extensive ethnic unrest in the city of Gulja (Yining) in February 1997. The unrest started with a peaceful demonstration by Uighurs, which was brutally

suppressed by the security forces and followed by sporadic rioting and violence over 2 days. The government's report gives a simplistic and distorted picture of the unrest—which it calls an "incident." It omits for example to mention the extreme brutality used by the security forces against both protesters and residents, and describes the protesters as "terrorists."

This confirms Amnesty International's concerns, expressed earlier about legislation, concerning the very loose and broad definition given to "terrorism" by the authorities in China.

ESTIMATES OF ARRESTS IN THE XUAR SINCE SEPTEMBER 2001

Due to the strict control exercised by the authorities over all politically "sensitive" information and the lack of access to the XUAR for independent human rights monitors, it is difficult to estimate with accuracy the number of people detained, arrested or sentenced at any one time in the region. However, on the basis of the reports it has monitored, Amnesty International believes that the number of people detained for investigation on political grounds over the past 6 months is likely to be in the thousands, with at least scores charged or sentenced under the Criminal Law—most of them Uighurs. There is as yet very little information on people who may have received administrative sentences involving detention in "re-education through labour" camps.

The reports available from official sources give an incomplete picture of the extent of repression. They refer only to a few cities and areas of the XUAR. In addition, official reports of arrests usually refer to people under formal "arrest" (charged) and rarely account for the much larger number of people detained for interrogation, who may be held for long periods without charge. Neither do they usually account for those who receive "sentences" of "re-education through labour," an administrative punishment imposed without charge or trial which involves up to 3 years' detention in a labour camp. Official media reports also give a patchy picture of political trials and sentences. The official media hardly ever reports on trials in the XUAR and publishes only selected reports of the "public sentencing rallies or meetings" which are held to announce verdicts and sentences.

Uighur exile sources estimate that at least 3000 people were detained in the political crackdown in the XUAR from mid-September 2001 until the end of 2001. They have also reported that during the same period at least 20 people tried on politically driven charges were sentenced to death and executed, and many more sentenced to prison terms.

CONCLUSION

Lack of genuine "rule of law" plays a major role in the human rights abuses occurring in China. The vague and contradictory provisions of the law lead consistently to its arbitrary use and provide wide scope for abuse of power, affecting a very large number of people in the country. In addition, the law is manipulated by the authorities as a tool to imprison political opponents, to silence government critics, to harass and intimidate independent religious groups, and to suppress fundamental freedoms among ethnic minorities. Even though the Chinese authorities have taken some steps to reform the law, this has had no significant impact for the overall protection of human rights in the country.

Serious human rights violations are currently being perpetrated against a broad range of groups, including religious and spiritual groups, in particular members of the Falun Gong spiritual movement. Extensive abuses are also occurring in the context of the Chinese government's current campaign against "separatist, terrorist and religious extremist forces" in the Xinjiang Uighur Autonomous Region. These include violations of a broad range of civil, political, social and cultural rights. Amnesty International is particularly concerned at reports indicating that thousands of people may have been arbitrarily detained during this crackdown in the region and some sentenced to death and executed after summary trials. It is also concerned that serious abuses, such as prolonged incommunicado detention, torture, denial of access to lawyer and other rights associated with fair trial, are likely to have increased in the crackdown.

RECOMMENDATIONS

Exclude all evidence extracted through torture from all proceedings, Criminal or Administrative

- Revise the Criminal Procedure Law and other relevant laws and regulations to introduce clear and unambiguous exclusion of all evidence obtained through torture.

- Institute for all suspects all necessary guarantees of the presumption of innocence, including the right to avoid self-incrimination and the right to silence.

End Arbitrary or incommunicado detention

- Abolish all forms of Administrative detention which are imposed without charge, trial or judicial review. Introduce procedures to ensure that all detainees are brought before a judicial authority promptly after being taken into custody and regularly thereafter.
- Ensure that this judicial authority can effectively continue to supervise the legality of the detention and conditions of detentions.
- Effectively outlaw the misuse of "supervised residence" for detention outside recognized places of custody.
- Enable detainees, their relatives and legal representatives to challenge the legality of all aspects of detention, not just on the basis that it has exceeded legal time limits.
- Enhance and protect public scrutiny and accountability of official organs holding the power to detain citizens.

Ensure detainees effective rights of access to lawyers and family

- Guarantee all detainees, as a matter of right and from the outset of any form of detention by the state, and regularly thereafter, access to legal representatives, relatives and doctors of detainees' choice.
- Access should include the right for the detainee to have a lawyer present during interrogation.
- End current exclusions to access in cases such as "state secrets cases" and "where it would hinder investigations."
- End arbitrary limits in practice to the number and duration of meetings between detainees and their lawyers.

Anti-terrorism provisions

Review the provisions on terrorist crimes in the Criminal Law with a view to

- Removing the death penalty from the punishments they provide.
- Ensuring that these provisions do not criminalize activities which amount to no more than the peaceful exercise of fundamental human rights.
- Ensuring in addition that the offenses listed in these provisions are clearly defined in unambiguous language.
- Ensure that any future legislation related to "counter-terrorism measures" conforms to international human rights standards.

End torture

- Revise the Criminal Law, Criminal Procedure Law and review prosecution policy to ensure that all acts which constitute torture as defined in Article 1 of the Convention against torture are fully and effectively outlawed. Prosecution should not be limited to cases resulting in death or serious physical injury. Attempts to commit torture, and acts constituting complicity or participation in torture committed by anyone acting in an official capacity should also be punished.

Demand the release of Rebiya Kadeer, who was arrested for trying to meet with Congressional Research Service (CRS) staff and Congressional staff.

Thank you for inviting Amnesty International for this important hearing.

PREPARED STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

APRIL 11, 2002

I would like to welcome all of you to the second hearing of the Congressional-Executive Commission on China. Today, we will continue to pursue the relationship between rule of law and protection of human rights in China. At our next hearing in June, we will look at commercial rule of law and the WTO.

In the Commission's work, I start from one fundamental assumption—that a modern, industrialized Nation must have a legal system that is clear, fair, consistent, impartial and independent. There can be no room for arbitrary decisions. The police and the courts must be held accountable for their actions. The law must determine when rights are granted, and when rights may be taken away, not the arbitrary whims of administrative officials. This is necessary in commercial law for routine business to proceed, and it is no less necessary in civil and criminal law.

China is a conundrum. Thirty years ago, Mao Zedong was supreme leader of a totalitarian Marxist-Leninist system. Today, after two decades of reform, the por-

trait of Mao that hangs from Tiananmen Gate overlooks a vastly different China. On the streets of Beijing, Shanghai and other cities, one would be hard pressed to find any real evidence of Marx or Lenin.

Power in China has become much more diffuse. It is wielded by an ever-increasing number of officials and bureaucrats within the Communist Party and the central government, as well as officials at the provincial and city level. A significant part of the economy is now based on market principles. State-owned enterprises are disappearing rapidly. Some journalists challenge government-imposed restrictions on press freedom. The practice of religion is spreading rapidly. Legal clinics teach ordinary citizens about some of their rights, albeit within strict boundaries.

Nevertheless, despite these changes, Xiao Qiang, head of the NGO Human Rights in China, reminded us at an earlier hearing that the Chinese government has become a system of rule by law rather than rule of law. And that two-letter preposition, rule by law versus rule of law, makes all the difference. Under rule by law, authorities manipulate the law to achieve their own ends. Laws are often used as a means of subjugation or repression. With rule of law, the law itself is the final word. Human rights can only be protected within a system of laws. Anything else is simply arbitrary.

The Commission is beginning to work on its first annual report which is due in October. The report will include recommendations about how we can help China respect rule of law—a necessary step in China's march to join the community of nations. These hearings, along with the detailed roundtables being held by the staff, will provide significant input into that report.

Let me list several questions that I hope we can address today. We have a distinguished panel of witnesses to help us do that.

—How does the criminal justice process work in China? How can we help improve it?

—What is the current status of lawyers in China? To what degree can they challenge police and prosecutors and defend clients without fear of punishment or retribution? How can we help improve the situation for lawyers in China?

—Is China a more rules-based system than in the past? What are the recent trends?

—Can one differentiate between a rules-based commercial law system and a rules-based civil and criminal law system?

PREPARED STATEMENT OF HON. DOUG BEREUTER, U.S. REPRESENTATIVE FROM NEBRASKA, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

APRIL 11, 2002

This second formal hearing continues the Commission's exploration of the relationship between the current Chinese legal system and China's evident difficulty in meeting internationally recognized human rights norms. One practical example of this relationship is the limited ability of Chinese individuals to have access to the judicial system to vindicate the basic rights granted to them by China's own constitution. The good news is that the Chinese legal regime has some legal mechanisms through which Chinese citizens can challenge and check the arbitrary exercise of power by government officials. The bad news is there aren't enough such mechanisms: for example, no practical recourse exists through the courts for a prisoner or his family to challenge a detention that exceeds existing time limits. Unfortunately, there are other examples as well.

I agree with the Senator that our starting premise should be that China must develop a modern legal system if it wishes to achieve its ambitions to become a developed country and to assume an equal place among nations in the international system. China's aspirations as a nation—to economic, social, and cultural development at home and to regional and international influence abroad—seem to me to be much more difficult to achieve without a legal system with modern characteristics. I think there is basic agreement about what such characteristics are: openness, transparency, notice and opportunity to be heard, choice of legal counsel, public proceedings, and an independent professional judiciary, to name a few.

Again, there is some reason for optimism: legal reform has been on the Chinese government's agenda for a number of years, and many of the new laws that have been enacted are improvements over those they replaced. But much remains to be done, and I believe it is because of that need that the United States can help make a difference as China modernizes its legal infrastructure.

Thus, we again explore the thematic subject matter of the first hearing, looking at human rights in the context of legal reform in China.

Our witnesses today bring strong personal and institutional backgrounds in human rights, political prisoners in China, and in rule of law programs in China. John Kamm's work on political prisoners reminds all of us that a person with energy, personal commitment, and knowledge about the language and culture of another country can truly make a difference. The Lawyers Committee for Human Rights and Amnesty International represent the type of nongovernmental organizations that have been at the forefront of human rights advocacy, while stressing the importance of the rule of law. And the China Law Center at Yale University represents the academic world, in which scholars and program directors at a number of U.S. universities and institutes have reached out since the late 1970's to build cooperative programs with Chinese counterparts. A significant portion of the legal reform we are seeing in China today can be traced to roots in these programs.

I look forward to hearing from these distinguished witnesses, and to a spirited and insightful question and answer session after their formal statements.

PREPARED STATEMENT OF HON. MARCY KAPTUR, U.S. REPRESENTATIVE FROM OHIO

APRIL 11, 2002

Thank you, Senator Baucus and Congressman Bereuter, and thank you to each of our witnesses. We appreciate your dedication to this issue and your participation today.

Our Commission was charged with two main responsibilities: to study the human rights situation in China and the rule of law procedures as well. As we focus on rule of law today, our spotlight should be broad. We must consider the legal system from the ground up, including: legal education training, legislative development, law enforcement training, access to legal assistance, and a fair and open judiciary. This will be crucial to the development of a working rule of law.

Chinese citizens must know that the law is in place to punish violators, but also to protect citizens from abuse. The law should not be something that the Chinese should fear. Instead, it must be a vehicle for labor, environmental, and human rights enforcement. I hope that someday soon the citizens of China will be able to trust the lawmakers, enforcement officials, and the judicial appointees as guardians of the people.

By now, the Chinese people know the difference between "rule of law" and "rule by law." Today, all too often, law is used as a weapon. Alleged "enemies of the state" are imprisoned for violating internationally recognized rights, such as freedom of speech and the freedom to organize.

The increase in the number of people studying law in China is encouraging. My only concern is limits and registration requirements placed on practicing attorneys and law school professors. Access and government support should not vary by region—every citizen must have equal protection under the law.

In order for China to interact with other nations, whether through trade or diplomatic means, a functioning and just system for the rule of law is necessary, both in their domestic and international relations. Businesses and foreign governments must be able to rely on a sound legal framework protecting worker, investor, and employer rights. Recent media reports show that even large, multinational corporations like, FedEx, UPS, and DHL have to initiate negotiations to gain even the slightest portion of the marketplace. An active member of the global economy must be ready to "play by the rules." This will offer China many challenges.

I look forward to a future for China that will allow freedom to flourish and will adopt a system of laws that will bring liberty to every citizen.

SUBMISSIONS FOR THE RECORD

PREPARED STATEMENT OF MICHAEL POSNER, THE LAWYERS COMMITTEE FOR HUMAN RIGHTS

APRIL 11, 2002

The Lawyers Committee is an independent non-governmental human rights organization. We aim to hold governments accountable to the international standards of human rights, and work to develop stronger models of corporate accountability in the global market place.

Human rights conditions in China continue to be an issue of deep concern. We appreciate the opportunity to bring some of the most alarming issues to the attention of your Commission.

Over the past year, China has secured a prominent position in the international arena, symbolized by its admission to the WTO, its successful bid to host the 2008 Olympics and the recent visit of President Bush. However, China's new stature has not been accompanied by a parallel improvement in its domestic human rights conditions. Instead, official statements about upholding "the rule of law" have frequently veiled harsh political repression. This is most poignantly illustrated by the "Strike Hard" campaign against crime, which resulted in scores of executions after procedural and substantive abuses of criminal law. Moreover, in the aftermath of the September 11th attacks in the United States, the Chinese government has misused anti-terrorist rhetoric to legitimize harsh crack-downs in Tibet and Xinjiang province, as well as illegitimate censorship of all forms of media, including the Internet.

An abundance of NGO-reports, as well as the annual evaluations of China's human rights practices by the State Department's Bureau of Democracy, Human Rights and Labor, narrate these and other violations of the most fundamental human rights. They describe crackdowns on dissidents, arbitrary arrests and detentions of suspects, torture, forced prison labor, and abusive labor conditions. Freedom of religion continues to be seriously curtailed,[1] freedom of expression continues to be curtailed,[2] and voices that endeavor to draw attention to pressing issues of national and global concern are frequently silenced with violence.[3]

The Lawyers Committee has welcomed positive developments in the Chinese legal system over the past few decades. Provisions in newly enacted legislation often allude to improved protection of fundamental social and human rights norms. However, ongoing violations illustrate that a strong legislative framework cannot by itself secure the rule of law. China needs to build a strong, independent legal profession to support the legal system, and to enable its citizens to enforce their legal rights. Without actual opportunities and mechanisms for enforcement, the rule of law remains a paper tiger.

In this submission, the Lawyers Committee will focus on two persistent problems that it considers to be key to the failing rule of law in China. The first relates to China's failure to respect the people's freedom to organize and voice injustices. This problem is dramatically highlighted by China's repressive response to the recent

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[1] For instance, the New York Times reported on March 26, 2002 that Roman Catholic Bishop Julius Jia Zhiguo (67) was arrested in Hebei Province, central China. His whereabouts are unknown. The Bishop previously spent approximately 20 years in jail or labor camps for his loyalty to the Vatican and was often kept under house arrest. Another obvious example relates to the continued suppression of the Falun Gong sect. Since the sect was banned in 1999, tens of thousands of practitioners have been arrested, imprisoned without trial, and forced to undergo "re-education through labor." Falun Gong claims that more than 1,600 followers have died in police custody or detention centers. The crack down continues, most recently with arrests and deportation of foreign followers. See, e.g., BBC world service, March 7, 10 and 15, at http://news.bbc.co.uk/hi/english/world/asia-pacific/default.stm.

[2] For example, the Ministry of Propaganda prohibiting recently prohibited the Guangzhou based liberal newspaper Southern Weekend to publish a lengthy report on corruption at one of China's biggest charities, Project Hope. The charity is sponsored by a branch of the Communist Youth League, which rejected the accusations of corruption as "a terrorist attack on the China Youth Development Foundation by vicious criminals." NYT, March 23, 2002, available at http://www.nytimes.com/.

[3] For example, the NGO Human Rights in China reports the recent arrest and detention, on January 24, 2002, of Wang Daqi, Professor of Construction of Hefei Industrial University and editor of Ecology magazine. Since the 1989 Beijing crackdown, Professor Wang had published articles about social and human rights issues. The Chinese authorities previously attempted to prevent Prof. Wang from publishing these articles. At http://iso.hrichina.org:8151/iso/news—item.adp?news—id=691.

massive workers demonstrations in northeast China. The second is the ongoing persecution of legal practitioners in China.

THE RIGHT TO ORGANIZE AND FREEDOM OF EXPRESSION

Workers demonstrations in the northeastern provinces

Over the past few years, spurred by China's accession to the WTO, the Chinese market has opened to foreign investment. Increased competition forced China's state-owned enterprises to slim down and unemployment figures are staggering. Millions of workers have lost their jobs.[4] As China lacks a social safety net, many of these people face desperate poverty.[5]

Since the beginning of March, these conditions drove tens of thousands of laid-off workers to the streets, most notably in the cities of Daqing in Heilongjiang province, and Liaoyang and Fushun in Liaoning province. The protesting workers are asking for payment of overdue wages and pensions and are protesting against financial mismanagement.[6]

The Chinese authorities tried to suppress the demonstrations with a paltry carrot, promising meager payments of the wages due, and a crushing stick. Four of the workers' leaders were arrested in Liaoyang[7] and the police conveyed the message that those arrested would be "harshly" handled if the protests were to continue. There are alarming indications that one of these detainees was seriously mistreated.[8] While the demonstrations are widely covered in the international press, the local and national media were prohibited from reporting the events. Heavily armed forces were reportedly sent into Daquin to intimidate the demonstrators.[9]

Chinese officials apparently claimed that the protests are being pushed by "foreign black hands." The Liaoyang's state-run television station accused the protest leaders of colluding with hostile foreign forces. Local authorities were reportedly ordered to prevent the protesting workers from liaising with foreign labor groups and demonstrators in other provinces.[10]

The Lawyers Committee recognizes the challenges posed by the mounting unemployment in China.[11] However, these challenges cannot justify China's failure to respect its citizens' legitimate efforts to enforce their legal rights. These recent developments demonstrate that the Chinese people continue to lack a space to organize and voice injustices.

China's new Trade Union Law

In October, 2001, the National People's Congress adopted some significant revisions to its 1992 Trade Union Law (TUL).[12] Chinese officials have presented the

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[4] The World Bank reports that in many northeastern cities, unemployment is as high as 40 percent. China's Economy Minister Li Rongrong said in Beijing on last March 8, that 25 million workers have lost their jobs since 1998. See Far Eastern Economic Review, April 4, 2002, at http://www.feer.com/articles/2002/0204—04/p032china.html

[5] A March 19, 2002 New York Times article tells about a man in Liaoyang who was dismissed from a chemical plant last year with a payment of just $970 after 20 years of service. His wife was also placed on unpaid "long-term vacation" by her factory. Their 18-year-old son has been unable to find a job since he graduated from junior high school 2 years ago. The family is unable to live of the meager monthly welfare check of a $27.

[6] Factories are often responsible for providing pensions for their retired workers and unemployment benefits to workers that were made redundant.

[7] The names of the arrested leaders are Xiao Yunliang, Pang Qingxiang, Wang Zhaoming and Yao Fuxin.

[8] Yao Fuxin reportedly contacted his wife from prison to convey the message that the arrestees would be treated harshly if the demonstrations were to continue. This message effectively discouraged the protesters in Liaoyang. According to most recent reports, the police informed his relatives that Mr. Yao was hospitalized for high blood pressure and a heart condition. His family has not seen or heard from him since, and recount that Mr. Yao has no known history of such ailments, and was in good health at the time of his arrest. See New York Times, 19, 26 and 30 March , 2002, available at www.nyt.com.

[9] Far Eastern Economic Review, Ibid, footnote 3.

[10] South China Morning Post, 30 March 2002, at http://iso.hrichina.org:8151/iso/news—item.adp?news—id=728. This report includes a quote by political analyst Li Fan, who noted that Chinese leadership has not ruled out "high-handed measures to stem potential cross-provincial workers' movements."

[11] The Lawyers Committee commends the Memorandum of Understanding (MOU) of 17 May 2001, between the ILO's International Labour Office and China's Ministry of Labour and Social Security, which provides, inter alia, for a cooperative effort to address issues of unemployment and the promotion of fundamental workers rights. The MOU is available at http://www.ilo.org/public/english/chinaforum/download/chinamou.pdf. See also infra note 24.

[12] Trade Union Law of the People's Republic of China, promulgated on April 3, 1992, as amended on 17 October 2001. A critical discussion of the law is by the China Labour Bulletin,

Continued

amendments as a move toward compliance with the ILO Conventions and international standards pertaining to the rights to organize and bargain collectively. The new TUL stipulates that workers have the rights to organize and join trade unions "according to law," and to democratically elect their representatives.[13] The law is also applicable to foreign and private companies.

However, the All-China Federation of Trade Unions (ACFTU) continues to be the only legal workers' organization in China. The ACFTU is controlled by the Communist Party, and headed by a party official. The TUL does not recognize the right to organize autonomous trade unions. Moreover, it fails to recognize the right to strike.[14]

The Lawyers Committee is deeply concerned about China's continued rejection of independent union activity. Freedom of expression, and freedom to organize and associate are fundamental human rights and their protection is essential to ensure the rule of law.

PERSECUTION OF LAWYERS

In this submission, the Lawyers Committee also wishes to highlight its concern about the continuing persecution, threats and harassment directed against lawyers who try to confront common injustices. In 1998 the Lawyers Committee addressed this and related issues in a report on Lawyers in China: Obstacles to Independence and the Defense of Rights.[15] Unfortunately, many of the problems described in that report continue to be matters of concern.

The report includes an analysis of the 1996 Lawyers Law, which, in general terms, regulates the legal profession.[16] The Lawyers Law was inspired by, yet does not wholly encompass, the U.N. Basic Principles on the Role of Lawyers (1990).[17] Nevertheless, the Law and the Basic Principles share the intention to protect lawyers from physical or other forms of abuse, and from interference when carrying out their responsibilities in accordance with the law.[18] However, despite this strong legal framework, there are recurring reports of intimidation and threats targeted at legal practitioners. The case of Zhou Litai illustrates this problem.

ZHOU LITAI

Since 1996, Zhou Litai has defended the rights of workers in the Shenzhen area. In a series of high-profile cases brought against local government authorities, foreign investors and company owners, he represented more than 800 factory workers in labor disputes and struggles for compensation for grave work injuries. Many of his cases involved legal action against the Labor Bureau or the social security department. In August last year, he represented 56 women workers in a South Korean-owned wig factory in Shenzhen, who had been subjected to illegal body searches. Mr. Zhou achieved a successful out-of-court settlement of this case.

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at http://iso.china-labour.org.hk/iso/article.adp?article—id=1976&category—name=Labour percent20Laws

[13] Article 3 and 9 of the TUL, supra note 12.

[14] The TUL confirms the stance that China took in February of last year, when it ratified the International Covenant on Economic, Social, and Cultural Rights with the reservation that it would apply the provision for freedom of association "in accordance with the country's actual conditions." This factually meant a continuation of the legal prohibition on independent unions. It be noted in this respect that as a party to the ILO's Declaration on Fundamental Principles and Rights at Work (1998), China should be deemed to have agreed to respect and ensure workers' right to freedom of association and the effective right of collective bargaining. Moreover, in October 1998, China signed the International Covenant on Civil and Political Rights, which in article 8 guarantees the right to freedom of association and freedom to form trade unions. Although China has yet to ratify this convention, its signature can be taken as to signify its intention to be bound by its provision.

[15] Lawyers in China: Obstacles to Independence and the Defense of Rights, Lawyers Committee for Human Rights, New York, 1998. Copies of this report are available upon request.

[16] Lawyers Law of the People's Republic of China, adopted May 15, 1996, effective January 1, 1997. The Lawyers Law is available online at http://www.qis.net/chinalaw/prclaw10.htm

[17] Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Havana, Cuba, August-September 1990. The Basic Principles enshrine the rights and responsibilities of lawyers around the world, and also lay out states' obligations to ensure effective and equal access to lawyers for their residents.

[18] Article 3 of the Lawyers Law, supra note 14, declares that lawful legal practice shall be protected by the law. Article 32 provides that the personal rights of a lawyer will be inviolable in the course of his or her legal practice. The Basic Principles, supra note 15, are more detailed, yet provide essentially similar protection in artt. 16–22.

On December 19, 2001 the Longgang District Bureau of Justice in Shenzhen ordered Mr. Zhou to close his legal practice.[19] The order came unexpectedly and seems to contravene both international law and domestic regulations.[20] It appears that the authorities wrongfully issued the order to end the negative attention that Mr. Zhou's successful litigation practice has drawn to the Shenzhen region. As noted above, both international human rights standards and the Chinese Lawyers Law expressly protect lawyers from ungrounded interference and intimidation.[21] Mr. Zhou Litai has filed suit against the District Bureau of Justice with the Longgang District People's Court, to contest the legitimacy of the order.[22]

Unfortunately, Mr. Zhou's case is not exceptional. It exemplifies the intimidation that many legal practitioners who call for social reform commonly face.[23] The Lawyers Committee considers this to be an issue of grave concern. Mr. Zhou's account and achievements illustrate a commendable development in which Chinese people are increasingly turning to the legal system for protection. This is valuable progress that needs to be fostered, not suppressed.

As China works toward the rule of law, it is critical that it continues to develop and strengthen its legal system. However, it should be recognized that this system is only as strong as the professionals who work to uphold it. In this understanding, it is essential that China builds and protects a force of independent legal practitioners who can vigorously use the legal system to confront injustices.

RECOMMENDATIONS

Most notably with its accession to the WTO, China has successfully secured a profitable place in the economic world order. However, it continues to refute the most fundamental human rights principles on which this global economic order should be build. This submission highlights only a few of China's failings in this respect.

Your Commission was established with the responsibility of placing an ongoing and focused spotlight on China's human rights practices. In this respect, the Lawyers Committee urges the Commission to maintain a strong and critical stance.

In addition, the Lawyers Committee proposes the following recommendations to aid your efforts to promote the rule of law in China.

1. Your Commission can and should use its authority to ensure that human rights issues maintain at the forefront on the U.S. trade agenda, and play an central role in the design of the bilateral Sino-US trade-relations.

2. It is important that the Chinese government continues to be pressured to respect fundamental human rights, in particular the right to organize and to freedom of expression. Curtailments of these rights, in particular China's suppression to the workers demonstrations in its northeastern provinces, should be strongly condemned.

3. The U.S. should contribute and support with all appropriate means the objectives outlined in the Memorandum of Understanding, between the ILO's Inter-

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[19] This matter was also covered in a New York Times article on January 3, 2002, which can be found online at http://college4.nytimes.com/guests/articles/2002/01/03/894481.xml.

[20] The Lawyers Law, supra note 14, states in Article 12 that "legal practice shall not be subject to geographical limitation." This means that a lawyer licensed in one region of China may practice in another without obstruction from the local authorities. Mr. Zhou is in the possession of a Chongqing license and is thus entitled to practice anywhere in China.

[21] See supra note 16.

[22] The Shenzhen local bureau of justice has previously attempted to confiscate Mr. Zhou's license, shortly after he started his practice in 1997. At that time, the bureau returned the license to Mr. Zhou after he initiated legal proceedings. China Information Center on January 16, 2002: http://www.china.org.cn/english/2002/Jan/25353.htm

[23] This is confirmed, for instance, in the research paper Empty promises: human rights protections and China's criminal procedure law in practice by the NGO Human Rights in China, which states: "Mounting official hostility toward lawyers have also greatly increased the risk of representing criminal defendants. Lawyers who undertake such work are often harassed and intimidated, and sometimes detained or even convicted of crimes, merely for actively defending the interests of their clients. Lawyers have consequently been reluctant to work in criminal defense, which has led to a disturbing decline in the number of criminal cases where defendants are represented by counsel." The paper is available online at http://iso.hrichina.org:8151/download—repository/A/cpl percent2001.doc. The graveness of such intimidation is illustrated, for instance, by the case of Xu Jian, a labor lawyer who was sentenced to 4 years imprisonment on July 18, 1999. The charges, "incitement to overthrow State power," are based on his activities as a labor rights lawyer, including efforts to educate workers about their legal rights.

national Labour Office and China's Ministry of Labour and Social Security of the People's Republic of China.[24]

4. The Lawyers Committee believes that it is important to recognize the educative, guiding role that can be played by foreign governments, human rights groups, law schools, bar associations and other international actors in the development of law in China. Underlining the position of China as a prominent member of the international community, efforts should be made to ensure the continued involvement of these foreign actors.

5. In the absence of a legal right to create independent trade unions, the U.S. Government should encourage, engage and assist multinational companies to develop mechanisms, at a factory or company level, that grant workers the space and opportunity to organize and bargain collectively.

6. It is important that the Chinese government continues to be pressured and assisted, with all suitable means, to fully comply with the provisions of the U.N. Basic Principles on the Role of Lawyers, and to revise those aspects of Chinese law that restrict the ability of lawyers to freely represent their clients and to organize independent bar associations.

7. In this line, the Chinese government should ensure that legal provisions of the Lawyers Law are properly enforced, to ensure that lawyers can freely carry out their professional duties without official interference, restrictions, threats or intimidation. Bar associations and the Chinese Ministry of Justice should be engaged to create mechanisms to ensure the adequate protection of legal practitioners.

8. Particular assistance should be provided to the training of lawyers, both in China and abroad. Training programs should be designed to fit with China's particular conditions and needs. The exchange and sharing of relevant information should be stimulated. Assistance should also be provided to China's law schools for the design of courses and teaching methods.

9. At the same time, to promote high professional standards, these institutions should be encouraged to publicize and facilitate the rights of clients to bring malpractice suits, in the belief that this will encourage lawyers to seriously consider their professional responsibilities.

10. Assistance should be provided in the creation of a legal aid system, by providing know-how and financial support where appropriate.

11. Assistance should be provided to provide training to sensitize the relevant branches of government to the importance of the independent role of the lawyer within the legal system.

[24] See supra note 11. These objectives provide for measures and assistance for (1) the promotion of international labor standards and the Declaration on Fundamental Principles and Rights at Work, (2) issues of unemployment and the reform of China's labor market, (3) the development of a system for social securities, and (4) the promotion of social dialog, including social bargaining.