

## **Statement of**

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Thank you for inviting me to represent The Asia Foundation at this Congressional-Executive Commission Roundtable on Rule of Law Programs in China. I have been intimately involved with the Foundation's China law programs, and have worked with and had exposure to China programs operated by other organizations for many years. In this regard, I am pleased to offer my perspective on the Foundation's legal reform programs in China, the expectations for and impact of such programs, and, most importantly, how these programs are making a difference in the development of a legal culture and legal practice in China.

The Asia Foundation has supported programs in China since 1979. The Foundation's efforts over the years have focused on governance, legal and economic reform, U.S. China relations, the development of the non-profit sector and the role of women in society. Programs have included U.S. study programs and exchanges in the Asia region, cooperative efforts to develop cross-strait relations, technical assistance, and support for public education on local governance reform and legal rights.

The area of legal development is not a new one for The Asia Foundation. Law reform and legal development have been a centerpiece of the Foundation's programming throughout the Asia region for nearly 50 years, and has been a major area of focus in our China program since 1979. Our approaches and grant-making techniques in China are consistent with those applied in other countries in Asia. We identify constituent interests, evaluate needs, and provide sequential grants, all of which are intended to strengthen legal reform and, in various ways, promote citizens' rights. We work with government institutions at the national and sub-national levels, and with citizens' groups and the nascent NGO sector. As a result of a long-term, consistent commitment to programs in China, the Foundation is able to work effectively with both Chinese government and nongovernmental entities to develop and implement programs throughout the country.

While support for rule of law programs in China is a relatively new field, it has become a crowded one. Even before the 1997 Presidential Summit, where former President Clinton and President Jiang Zemin agreed on an agenda for rule of law development in China, many bilateral and multilateral donors were supporting a wide range of legal reform initiatives. Ongoing, comprehensive legal assistance and cooperation programs are supported by Germany, Canadian CIDA, British DFID, the European Union, Asian Development Bank, World Bank totaling millions of dollars. These programs have included legal education, exchanges, judicial training and administration, technical assistance in specialized areas of the law, and technology and database management of legal information. This flood of assistance to China is a clear acknowledgement of China's position in the world economy and the desire of donors to encourage China toward predictability and transparency, and, at the same time, address human rights concerns. To the extent that the U.S. has been consistently involved in supporting on-the-ground programs, these efforts have been largely conducted by the nongovernmental sector, primarily by The Asia Foundation, the Ford Foundation and a number of American universities which have provided opportunities for Chinese legal professionals to study in degree and non-degree programs in the United States. They are no where on the scale of assistance provided by European and other donors.

The Asia Foundation's law program focuses on three major areas. The first is the area of **administrative law**, where our programs are aimed at developing the mechanisms to restrain the arbitrary exercise of state power by regularizing the functions of government agencies at different levels, defining citizens' rights, providing redress for citizens who have been wronged by the actions of government, and punishing offending officials. These programs are designed and implemented in cooperation with the National Institute of Administration, which is China's only civil service training institution, Peking University Law School, and the China Administrative Legislation Research Group, a national network of legal scholars, jurists, and officials that support legal drafting and interpretation of law by the National People's Congress. This ongoing effort provides technical assistance to those drafting specific administrative rules and regulations to limit the discretion of the state, by clearly defining the boundaries of government authority. To the extent that we hear about cases in the press involving citizens suing government for vindication of their rights and compensation for loss (and many more cases we do not hear about), these lawsuits are based precisely on these new rules and regulations. The Administrative Litigation Law and State Compensation Law, in particular, allow citizens to sue the state, albeit only for concrete acts of commission or omission by specific agencies or individuals.

Under this program of administrative law reform, the Foundation currently supports a program to help in the development of a draft Administrative Procedure Act, with planned submission to the National People's Congress by the end of 2003. This Act will mandate transparency, including prior notice, public hearings, consultations and require consistency in rule making across bodies of law and at different levels in China.

In cooperation with the Office of Legal Affairs of the State Council, we are providing training for national, provincial and municipal level officials in WTO compliance as it relates to administrative law. Specifically, this training covers the provisions related to uniformity in applying WTO rules and norms consistently across all of China; transparency in providing prior notification of new rules and changes in decisions, and points of contact for complaints; and independent impartial review of trade-related decisions at the national and sub-national level. This training targets the key Legal Affairs personnel in every province in China, including the autonomous region of Tibet, municipal personnel in the largest cities (Beijing, Shanghai, Tianjin, Chongqing), as well as national Legal Affairs staff.

A second area of emphasis for the Foundation is on **legal aid**, to provide legal protection of the rights and interests of citizens under civil law. This program focuses on China's national legal aid system, under which assistance is provided to legal aid centers in some of China's poorest areas, to ensure adequate legal representation for the indigent and disadvantaged. There are now government sponsored legal aid centers in every province in China, a wide range of legal services operations run by nongovernmental organizations, women's groups and universities, among others. These groups litigate, they counsel, mediate and educate. The Foundation provides support for the case handling of civil cases in five centers, under what the National Legal Aid Center refers to as "The Asia Foundation Model", where funding for case handling provided by the Foundation is matched by operational funding from the local government.

The Foundation also works in partnership with the private sector, for instance, in support of a program for migrant women workers in the Pearl River Delta region in southern Guangdong province. With funding from the Levi Strauss Foundation, this program provides services and training for migrant women workers, who make up 60% of the migrant worker population. The Foundation has been active in Guangdong over the past three years, working with the local labor union, the Women's Federation and university based research centers to provide counseling and legal services to migrant women workers.

The Foundation also supports **public legal education**. In the program for migrant women workers, the Guangdong Women's Federation developed and last year, distributed 20,000 copies of *Learn to Protect Yourself*, a handbook covering women's basic legal rights. This handbook will be reprinted, in preparation for

a distribution of 30,000 copies this year. The Federation also operates "street legal education fairs," provides consultation services, and supports a legal aid group serving the migrant women population.

Another example is a television program the Foundation helped fund, "Let's Talk About Law Today," which has become one of the most popular television shows in China. This program, which appears on CCTV, China's national television network, introduces the stories of ordinary people whose legal problems are explained, addressed, or resolved according to the law. In addition, analysis is provided by Chinese law experts to introduce the concepts of law and its application to the broader audience, and the program even offers legal advice. While "Law Today" is not the first television law show dealing with legal issues, its success has encouraged similar law programs and, at present, approximately 2,000 provincial and city level stations now feature law related programs.

New, large scale efforts are underway by the government to educate Chinese citizens about their legal rights, using school textbooks, media campaigns, and through the efforts of legal aid centers and nongovernmental organizations. One can argue that the Chinese government is merely protecting its own interests and stability in the country, by ensuring that citizens feel that their rights are being protected under the law. This works to stem a rising public anger against arbitrary behavior by local government officials, state-owned enterprises where safety precautions are not enforced, and even where public services are not responsibly delivered, such as in health or education. At the same time, increased awareness among Chinese citizens of their rights under the law is slowly building a sense of legal culture that had not existed previously in the society.

This is all in the context of a rapidly changing environment. As you have heard in past testimony before this Commission, at the end of the Cultural Revolution, there were fewer than 3,000 lawyers and a handful of law school programs. Today China has hundreds of law schools and over 125,000 lawyers. In addition, hundreds of laws and regulations have been promulgated, including the 1998 Law on Lawyers, which basically creates a legal profession in which lawyers are no longer considered civil servants, but professionals responsible to their clients, and in 2000, a law on legislation, which is the first law of its kind to define a legislative process.

We all recognize there is a long way to go and there are significant limitations for donors and others supporting legal reform efforts. Even with laws in place and even if plaintiffs are able to win judgments, these are ineffectively enforced. Lack of judicial enforcement is one of the most serious problems in commercial and other disputes as well. In addition, we are well aware of the limits to public legal education. Just informing the public about existing law is a start, but it is not enough to ensure enforcement. Finally, public finance is a serious problem for legal and judicial reform. Without a public revenue stream adequate to pay for the services to be provided, it is difficult to recommend reforms because it is difficult to guarantee that they will be sustained.

On the other hand, there is currently a momentum that is driven by a domestic demand, and there are opportunities to work with the Chinese government and with the nongovernmental sector to expand and strengthen that momentum by delivering programs that address real problems at both the grass roots and policy levels. The Asia Foundation believes that these programs will make a positive difference over time. In the case of legal aid, they already have.

As China proceeds further into the reform process, there is now the prospect for genuine progress and real cooperation, but only through consistent effort and realistic expectations. We believe that these programs will contribute over time to the protection of the rights of the individual Chinese citizen and, overall, to American interests in China.