

**Statement**  
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**I. INTRODUCTION**

Founded in March 1989 by Chinese scientists and scholars, HRIC is an international non-governmental organization dedicated to the promotion of universally recognized human rights and the advancement of the institutional protections of these rights in China. Based in New York, with a Hong Kong office established in 1996, and a EU/UN liaison based in Paris, HRIC's board and staff include prominent human rights advocates, China scholars, and Chinese political exiles.

Through its extensive network among human rights activists inside China, and its education, advocacy, and cutting-edge research programs, HRIC addresses one of the most significant and complex challenges facing the international human rights movement today: how to promote human rights in an emerging economic, military, and political major power. The geo-political reconfigurations of the world since September 11 make it clear that China is pivotal to the region and the world-and also emphasize the difficulties in raising human rights concerns internationally.

The Congressional-Executive Commission can play a key role in ensuring that human rights concerns remain on the table. Both the Chinese and American people share important values and aspirations for human dignity and freedom. Both nations are facing great challenges and responsibilities for promoting human rights, ensuring domestic and global peace, and sustaining development.

For today's hearing, "Human Rights in the Context of the Rule of Law," I would like to make four points about the human rights situation in China, and conclude by suggesting five recommendations.

**II. Key Human Rights Challenges**

**A. Rule by law is not rule of law: Using law to suppress citizens' fundamental rights of association, freedom of expression, and religion**

There is a crucial distinction between "Rule of law" and "Rule by law". Chinese leadership has repeatedly reiterated its policy of "Yifa Zhiguo" ruling the country according to law. However, when there is no real democratic and representative legislative process and no judiciary independent from the party and state, law often becomes a tool that suppresses rather than protects the fundamental rights of Chinese people, including the rights to association, freedom of expression, and religion. For example, law is often used to crack down on peaceful political activism, Falunggong practitioners, and labor organizers, as well as peaceful advocates for Tibetan and Xinjiang self-determination. Too often, those trying to exercise these fundamental rights are accused of "endangering state security", an ambiguous charge that allows overarching flexibility in silencing voices of dissent. In addition, recent years have seen the implementation of extensive regulations to censor and control the Internet, China's virtual

public space. In the limited time today, I will focus on those people whose fundamental rights have been stripped by the Chinese government.

**- Political Dissidents in China: Prisoners of Conscience** - HRIC has closely followed the Chinese government's shift of recent years toward using "state security" as a rationale for the suppression of dissent. This concept has culminated in the replacement of the accusation of "counter-revolution" with that of "endangering state security" in the newly revised Criminal Code. However, the term "state security," and what constitutes harm to it, is wrought with ambiguities in the Chinese legal system. Too often, this concept of state security is used to justify violations of basic rights, including the peaceful freedom of expression, association and assembly, and practice of religion. HRIC is concerned that the charge of "endangering state security" has broadened the capacity of the state to curtail the peaceful exercise of fundamental rights. The fact that over 2,000 "counter-revolutionary" prisoners (according to official statistics) have not had their convictions reviewed after the revision of the Criminal Code underscores this abuse. Political activists of the China Democracy Party have been given heavy sentences under the State Security Law. For example, Xu Wenli, Qing Yongmin, Wang Youcai were sentenced to 13, 12, and 11 years respectively in 1998.

**- June Fourth Victims** - Mr. Chairman, almost thirteen years after the June 4th Massacre and subsequent repression throughout China, more than a hundred Chinese citizens remain in prison for participating in the peaceful protests of 1989. We have names of 158 individuals for the city of Beijing alone (supporting documentation). Over 50 of these political prisoners are held in Beijing No. 2 Prison and are serving sentences of 15 years to life. Their only crime consisted of promoting democracy and respect for human rights. Yet these people were charged with criminal offenses and convicted of subversion of the state in patently unfair trials. Furthermore, for compiling this list of political prisoners and making it public, Beijing student Li Hai was found guilty of "prying into and gathering" "state secrets," and sentenced in 1996 to nine years' imprisonment. Even commemorating those who participated in the Tiananmen Movement is a crime against the state. On December 26, 2000, after more than a year and a half in incommunicado detention, Jiang Qisheng was sentenced to four years in prison for circulating an open letter suggesting citizens engage in peaceful activities to commemorate the tenth anniversary of the June Fourth Massacre, such as lighting candles at home.

**B. Institutionalized discrimination: Using law to discriminate against rural residents, migrants, and ethnic minorities**

In HRIC's NGO shadow report to the UN Committee on the Elimination of Racial Discrimination (CERD), HRIC pointed out on the discriminatory effect of PRC laws and policies on three main overlapping groups: rural residents, that is people with rural household registration or hukou, comprising 63.91 percent of the population; internal rural-to-urban migrants, part of a vast "floating population" estimated to range anywhere from 40 million to 120 million; and national minorities, making up 106.43 million persons or 8.41 percent of the population. Together these three groups constitute the vast majority of the PRC's population. The hukou system has created a system that gives the urban population privileged access to education, housing, economic opportunities and political participation. This hukou system thus violates the rights of rural residents and migrants to equal enjoyment and exercise of their human rights and fundamental freedoms. The failure of the PRC government to provide equal access and treatment in

political, economic, social, cultural and other fields of public life has created an apartheid-like system that threatens to undermine the security, stability and fairness of the PRC's modernization and reform efforts.

**C. Ineffective implementation and lack of accountability: The persistent gap between law on the books and law in practice**

Two examples stand out in the persistent gap between law on the books and law in practice: the lack of accountability for the June Fourth Massacre and the Revision of the Criminal Procedure Law.

**- Criminal Procedure Law (CPL)** - China's National People's Congress has revised the Criminal Procedure Law (CPL), effective on January 1, 1997. CPL provisions aimed at safeguarding rights have either been watered down by interpretative rules issued by law enforcement agencies, or violated outright without the authors of the violations suffering any consequences. Loopholes and ambiguities in the CPL have been exploited to the full by law enforcement authorities. In certain areas, the new CPL has actually resulted in greater limitations of key rights, such as regarding defense lawyers' access to prosecution evidence.

HRIC published a report, "Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice" (March 2001). The report focuses on the Chinese Communist Party (CCP) control of the judiciary, the role of lawyers, pretrial detention, use of illegal evidence, discriminatory application of the law and assessment of these issues in terms of international human rights standards in 2001. The full 90-page report (in English) is attached for the Commission to our submission.

**- Tiananmen Mothers Campaign** - Patterns of rights violations show that impunity and lack of accountability are a principal cause of human rights abuses in China. Mechanisms to hold officials accountable are deficient or non-existent. Controls on freedom of expression and association make it very difficult for people to expose abuses by officials and to achieve accountability.

For example, the crime committed against unarmed demonstrators in Beijing on June 4, 1989, remains uninvestigated and unpunished, despite the brave efforts of the victims' families acting under the banner of the Tiananmen Mothers. Hundreds of Chinese citizens remain in prison for participating in that year's peaceful protests. In June 1999, the victims' families asked China's Supreme People's Procuratorate to initiate a criminal investigation in order to determine the legal responsibility of the perpetrators. They submitted evidence consisting of testimonies from 24 victims' families and three people who were injured, and a list of the 155 known dead and the 67 known injured. To date they have received no reply. These families are subjected to constant harassment, from brief detentions and house arrest to surveillance and the confiscation of humanitarian funds sent from abroad.

**D. Arbitrary nature of the system: Administrative detention**

The improvement of the legal system will do nothing to improve conditions in the wide range of punishment institutions that operate outside the legal system, and in which large numbers of people are incarcerated. These include the system of "custody and

repatriation" (C&R) under which "undesirables" of all types, including women and children, are detained without trial, occasionally for periods as long as a year or more, and then shipped back to their home towns and villages; the system by which individuals can be sentenced by police or work-unit security personnel to three-year sentences of "re-education through labor" (RTL) in camps; the system of psychiatric hospitals, known as the Ankang, run by the Ministry of Public Security; and a host of other institutions, such as establishments for forced drug addiction treatment and for rehabilitation of prostitutes and clients, "welfare homes" for the detention of elderly dissident clerics, and unit-level detention facilities set up entirely outside existing regulatory structures by local governments, institutions, and companies. The scale of such administrative detentions is vast.

Custody and repatriation: In 1996, at a Ministry of Civil affairs conference on C&R, it was announced that across the country more than one million "vagrant beggars" were taken into custody every year, as well as upwards of 100,000 indigent children, and that over 600,000 persons were "repatriated" or "assisted in returning home" - a total of 1.7 million detainees in C&R facilities alone in that year.

Reeducation Through Labor: According to China's official figures, 230,000 people are currently held under RTL, as compared with around 150,000 in the early 1990s. RTL applies to people believed to be responsible of acts "too minor" to merit formal prosecution and is ordered by the public security departments alone, without any judicial review. RTL detainees do not have the right to counsel, the right to a hearing or the right to have the lawfulness of their detention reviewed by a judicial authority. Although its maximum duration is three years, it can be renewed for up to one more year if the detainee is believed to have performed badly in his or her "reform." It is frequently used to detain Chinese people who have peacefully exercised their rights to freedom of thought, religion, expression and association. However, we believe that this measure is arbitrary under the definition put forward in the judgment of the UN Working Group on Arbitrary Detention, and thus should not be applied to any detainees, regardless of the reason for which they are sent to RTL.

### **III. Recommendations:**

1. The Commission should urge the Chinese authorities to proceed with a comprehensive review of the convictions and sentences of all those imprisoned for alleged "counterrevolutionary" crimes, especially in light of the revisions to the Chinese Criminal Procedure Law that eliminated this category of crime. The Commission should also urge the Chinese authorities to unconditionally release all prisoners of conscience.
2. The upcoming visit of President Bush to China provides an important opportunity to publicly raise human rights concerns. Congressional members should urge President Bush to press for the release of political prisoners in a significant way and to publicly raise human rights issues such as the crack-down on freedom of expression, and the discriminatory treatment of China's rural and ethnic minority populations, and to engage the Chinese leadership in serious substantive discussions about these issues.
3. In monitoring the protection of freedom of expression and information in China, we urge the Commission to pay particular attention to the increasingly restrictive Internet regulation and surveillance by Chinese authorities, especially as these regulations interface with China's WTO accession obligations.

4. On multilateral initiatives, we urge the U.S government to immediately announce and lobby for a United Nations resolution expressing concern about the human rights situation in China.
5. We urge the Commission to develop and announce benchmarks for human rights compliance and rule of law developments over the next seven years leading up to the Olympics. For example, benchmarks regarding steps taken towards ending political imprisonment, abolishing reeducation Through Labor, and the hukou system.

Thank you, Mr. Chairman.

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### **Human Rights in China: Supporting Documentation and Materials**

<sup>1</sup> HRIC List of Urgent Cases of Political Prisoners (February 6, 2002)

<sup>2</sup> Announcement of the Tiananamen Mother's Campaign (July 27, 2000)

<sup>3</sup> HRIC Report: "Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice" (March 2001)

<sup>4</sup> HRIC Report: "Reeducation Through Labor (RTL): A Summary of Regulatory Issues and Concerns" (February 2001)

<sup>5</sup> HRIC Report: "Not Welcome at the Party: Behind the "Clean-Up" of China's Cities - a Report on Administrative Detention Under Custody and Repatriation Centers" (September 1999)

<sup>6</sup> "Promoting Human Rights in China: Report of the China Human Rights Strategy Group" sponsored by the Open Society Institute and Human Rights in China (November 2001)

<sup>7</sup> "Implementation of the international Convention on the Elimination of all Forms of Racial Discrimination in the People's Republic of China: A Report by Human Rights in China" (July 2001)