

**Law in Political Transitions:  
Lessons from East Asia and the Road Ahead for China**

**Tuesday, July 26, from 2:30 PM to 4:00 PM**

**Room 419 of the Dirksen Senate Office Building**

**Statment of  
Gretchen Birkle**

Chairman Hagel, Commissioners, thank you for holding this important hearing, and for your excellent work. I am delighted to be here today to testify before the Congressional-Executive Commission on China.

The theme of my testimony today—the rule of law in China—is of great interest and importance to the State Department, especially the Bureau of Democracy, Human Rights and Labor; Secretary Rice spoke about it during her recent visit to China on July 10. I appreciate this opportunity to provide our assessment of the current rule of law and human rights situation in China.

Since the grim last days of the Cultural Revolution when courthouses and law schools were closed and a handful of leaders arbitrarily exercised power, China has made some progress toward modernizing the legal system. But progress toward true rule of law has been limited. The rule of law means more than laws on the books and open courthouses. It requires independent institutions capable of dispensing justice fairly, transparently, and consistently, and it requires political rulers willing to submit themselves and their authority to the law, just as all other citizens. China has passed laws, opened law schools, established examination requirements for judges, and expanded legal aid. However, these changes are not enough to establish the rule of law. These kinds of actions must be followed by the creation of an independent judiciary.

Chinese authorities use the law to rule. Human rights defenders, democracy activists, and those expressing views that challenge the party's control are often convicted and jailed on trumped up charges. The case of Uighur businesswoman and activist Rebiya Kadeer is illustrative of the Chinese government's use of the law to repress those perceived as a threat to power. In 1999, Ms. Kadeer was arrested on her way to meet with U.S. Congressional staff to discuss human rights in China. Ms. Kadeer was convicted of "providing secret information to foreigners," specifically newspaper articles she had sent to her husband in the U.S. After spending more than five years in prison Ms. Kadeer was released last year in part due to U.S. Government and international pressure. But many other prisoners of conscience remain behind bars.

China's use of the law to repress is not limited to members of any one group. In another example, Hada, an ethnic Mongolian, has been in prison since 1995 for his peaceful political activities, including writing articles and books on political theory and Mongolian language and culture, and organizing the South

Mongolian Democratic League, an organization seeking to promote and preserve Mongolian language, history and culture in Inner Mongolia and to strive for the civil and political rights of Mongolians in China.

The Chinese Government has also used the legal system to control and regulate religious and spiritual activities. For instance, in October 2003, Beijing-based house church Christian Liu Fenggang was detained in Zhejiang Province, while conducting an investigation into reports of church demolitions and the detention of religious leaders. In August 2004, Liu was convicted on charges of disclosing state secrets and sentenced to three years in prison. Ms. Kadeer, Mr. Hada, and Mr. Liu's cases are three prominent examples of the Chinese government's use of the legal system to restrict freedom of expression and imprison those it feels threatened by. In China, law is an instrument of the government, but not yet a mechanism to protect the people.

Freedom and legal reforms are urgently needed in China, and wanted by the Chinese people. Last month, the international media reported on a land dispute between peasants and local officials in Shengyou village, Hebei province. According to media reports, when the peasants of Shengyou village defied orders to surrender their land to local officials, the officials hired hundreds of armed men to attack the villages. A violent clash resulted that left six farmers dead and as many as 100 others seriously injured. On June 3, there was also a labor incident in Guangzhou province involving several hundred anti-riot police firing tear gas against a group of 3,000 workers. As the workers pelted cars and buses with rocks and bricks, they chanted demands for higher pay. The workers, lacking independent labor representatives or a means to resolve a compensation dispute, turned to protest. China has experienced tremendous economic progress over the past 20 years, but in order to achieve sustainable internal development and integration into the international community, we encourage China to develop a legal system that protects property rights and that Chinese citizens trust and utilize to resolve disputes. China's nascent legal system is not effective in providing meaningful remediation, which further contributes to social unrest.

There are signs, however, that Chinese citizens' rights consciousness is increasing and they increasingly expect the legal system to provide justice. Several stories of wrongful executions of individuals whose trials did not meet international human rights standards resulted in a public outcry on the need for reform of China's criminal justice system. Yet the problems are manifest. Many defendants have been tried without adequate legal representation. Same day executions, which do not allow for full due process, are not uncommon, though some in the Government recognize the need for a more deliberate review process. Coerced confessions, lack of defense counsel, law enforcement manipulation of procedural rules, pervasive presumption of guilt by law enforcers, judges, and the public, and extra-judicial influences on courts continues to undermine the fairness and credibility of the criminal process in China.

Equally troubling is the intimidation, detention and arrest of those seeking to use the law to secure the freedom of Chinese citizens. Defense lawyers in China are coming under increasing pressure, especially those that use the legal system to protect the rights of fellow citizens. Lawyers representing activists, journalists, Falun Gong practitioners and others perceived to be a threat to Government power have been harassed, intimidated and detained.

In March 2004, the National People's Congress amended China's constitution to include the protection of

human rights. While the passage of this amendment is welcome news, it will only become truly meaningful and effective if it results in genuine reform and protection of the rights of the people. Again, provision of constitutional rights requires strong and independent legal institutions capable of upholding the constitution. As President Bush said, "All democracies need an independent judiciary to guarantee rule of law and assure impartial justice for all citizens." The Chinese Government needs to make these words more than words on paper. They need to institutionalize this Constitutional amendment and implement steps to create the legal mechanisms that would protect rights.

President Bush has made the promotion of freedom and democracy the cornerstone of U.S. foreign policy. This principle guides decisions about the character of our foreign assistance and allocation of resources.

Through a Congressional appropriation, the State Department is funding rule of law programs. We are actively engaged in promoting the rule of law in China through dialogue, programs, and multilateral fora. As the President said we must help other countries "build free institutions that will protect their liberty and extend it to future generations." We take seriously our responsibility toward individuals seeking to secure their inalienable rights seriously. We also encourage China to exercise a responsible role, especially with regard to fundamental human freedoms, as it takes on a more global role.

We support Chinese citizens working to secure their own freedom, and freedom for their fellow citizens, including freedom of speech, assembly, press, and religion. We particularly support human rights defenders, democracy activists, independent journalists and those seeking legal reform. Through our rule of law program the United States is able to support reform-minded Chinese and their efforts to undertake structural reforms that promise increased fairness, transparency, and rights protection in the legal and political spheres. As Secretary Rice said, "People choose democracy freely. And successful reform is always homegrown." It is our job to amplify the voices of these people and to assist them as they seek to build the kinds of institutions that will deliver lasting freedom.

This year we are programming \$19 million to promote rule of law, civil society, human rights and democracy in China. The projects we fund assist Chinese men and women who want to promote reforms that will lead to near-term results, while laying the foundation for longer-term structural political transformation. These programs address some of the most serious human rights concerns, including the need for due process, the harassment and detention of criminal defense lawyers, and the need to reform the reeducation-through-labor system. We support projects to train judges, prosecutors and lawyers in the use of oral advocacy skills, ethics, and judicial independence. These training programs seek not only to build skills but also to engage members of China's legal community in reforming their legal system. Through programs like these, judges, prosecutors, and lawyers, learn about other legal systems, which can serve as a model for legal reforms. We need to continue engaging legal practitioners because the future direction of legal reform in China will be determined largely by them. These programs are already having an impact, but there is still more that we can and should do.

A strong civil society is indispensable for a key part of a nation governed by the rule of law. To this end, we are also supporting projects to help non-governmental organizations become effective advocates for their communities by training them in advocacy skills and project management. Some of these advocates seek to protect the rights of migrant workers, women, children and consumers. We also support programs

aimed at improving public participation through elections and public hearings. Giving the Chinese people a greater voice is crucial to building a future China in which human potential is fully realized.

The State Department is also committed to raising human rights concerns in bilateral and multilateral settings. Through bilateral pressure, we were able to secure the release of Rebiya Kadeer and gain China's agreement to take several positive steps including: giving prisoners convicted of political crimes the same right to sentence reductions and paroles that are available to other prisoners, agreeing to host a visit by the Special Rapporteur on Torture, issuing a public statement that clarifies that religious education of minors is consistent with Chinese law and policy, agreeing to open an ICRC office by the end of July 2005, issuing an invitation to the Special Rapporteur on Religious Intolerance and agreeing to host a visit by the US Commission on International Religious Freedom.

We will continue to raise concern about the lack of democracy and respect for human rights directly with Chinese leaders and in public comments. During Secretary Rice's most recent trip, she raised human rights concerns, including specific cases, with Chinese leaders. We will not shy away from pressing our human rights concerns and urging the Chinese government to implement structural reforms. Chinese citizens themselves have spoken out about the need for the rule of law. By lending our voice and our support, we can help their voices resonate. As President Bush said in his Second Inaugural Address, our goal is "to help others find their own voice, to attain their own freedom, and to make their own way."

Chairman Hagel, Commissioners, promoting freedom and democracy is the cornerstone of U.S. foreign policy, and our policy towards China is no exception. Thank you, again, for this hearing. I would be happy to take your questions.