

Testimony to the Congressional-Executive Commission on China
for the hearing
Political Prisoners in China: Trends and Implications for US Policy
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Mr Chairman, I am privileged to be invited to participate in this hearing and I would like to thank you, your fellow commissioners, and the CECC staff for inviting me. Today I represent The Dui Hua Foundation, which has been engaged for more than a decade in an effort to uncover the names of individuals imprisoned in China for the non-violent expression of their political and religious beliefs. Our database of prisoner information includes the names of roughly 22,000 persons imprisoned for these reasons since 1980, of which more than 5,800 form an “active registry” from which we develop prisoner lists designed to raise individual cases directly to the Chinese government and encourage better treatment and early release.

Recent decades have seen China emerge as a global power, fueled by strong economic growth, its importance as a trading partner, and its key diplomatic role with regard to trouble-spots such as North Korea, Sudan, or Iran. During this period, many Chinese have enjoyed substantial improvements in living standards. To many developing countries, China serves as a model for the delivery of basic education and health care. Though not without caveats—for instance, the ballooning gap between rich and poor—China’s substantial progress in these areas cannot be denied. However, progress in the area of civil and political rights has unfortunately not kept up with economic and social development.

Over the past 2½ years in particular, roughly since the beginning of 2008, there has been a palpable sense that earlier progress towards rule of law in China has stalled, or even suffered a reversal, and there is mounting evidence that a crackdown is underway, one particularly targeting members of ethnic minorities, government critics, and rights defenders.

One manifestation of this can be seen in the recent sharp increase in criminal proceedings for “endangering state security” (ESS) a category of crime that includes vaguely defined and arbitrarily applied offenses such as “splittism,” “inciting subversion of state political power,” and “trafficking in state secrets for overseas entities.” ESS arrests more than doubled in 2008 compared to the previous year, and more arrests and indictments for ESS were carried out in China in 2008 and 2009 than in the entire five-year period from 2003 to 2007.^[1] In China, arrest almost inevitably leads to trial and trial to conviction. The most recent official statistics suggest that as many as 1,500 Chinese were convicted on state security charges in 2009—more than 3½ times the number convicted for ESS in 2004.^[2] (Data for the period from 1998 to 2009 are included in the [appendix](#) to this statement.)

Moreover, China’s Supreme People’s Court reports that these individuals are being punished more harshly, with a 20 percent increase in sentences of at least five years’ imprisonment in 2009.^[3] One of these harsh punishments was handed down to Liu Xiaobo, whose 11-year sentence for penning a few essays critical of the government and helping to draft the “Charter 08” political manifesto is the longest sentence known to have ever been handed down in China for the crime of “inciting subversion.”^[4] And statistics suggest that a majority of those punished on state security charges are members of the Tibetan and Uyghur ethnicities, many of whom were detained for engaging in non-violent protests against government policies.^[5]

But we mustn’t limit our concern to formal criminal proceedings on state security charges, because there are other kinds of political imprisonment in China. Charges of “illegal business activity” are used against the publishers of politically themed books or distributors of Bibles.^[6] Muckraking journalists and environmental activists are charged with “extortion” or “fraud,” and bloggers who criticize corruption or wrongdoing by local officials can find themselves imprisoned for “defamation.”^[7] Countless practitioners of Falun Gong or members of

unauthorized Christian sects are locked away for “using a cult to undermine implementation of the law” and subjected to specialized regimes of discipline and re-programming.[\[8\]](#) And I have not even yet mentioned the system of administrative incarceration known as “re-education through labor,” in which so-called “minor offenses” can be punished for up to three years without proper trial and without legal counsel—a system whose survival despite violating Chinese law testifies to its expedient value to the preservation of stability.[\[9\]](#)

The targets of political repression can expect no constitutional or legal guarantee that their rights will be protected during the proceedings against them. The geologist Xue Feng, an American citizen, was held incommunicado and subjected to physical and psychological abuse as police failed to honor their obligations under China’s consular agreement with the United States, and he languished in detention for more than two years while procedural deadlines were repeatedly ignored.[\[10\]](#) Defense lawyers face obstacles in their attempts to fulfill basic duties, such as meeting with detained clients and getting access to prosecution evidence, and their eloquent, reasoned defense statements fall on deaf ears in the courtroom while decisions against their clients are made by external, Party-dominated “adjudication committees,” sometimes before a trial has even begun. [\[11\]](#)

Once imprisoned, these individuals are seldom offered any clemency, victims of a penal system that equates good behavior with acknowledgment of wrongdoing and requires that sentence reduction and parole for those convicted of endangering state security be “strictly handled.”[\[12\]](#) Compared with a decade ago, fewer of the individuals whose cases are raised with the Chinese authorities by Dui Hua or through the bilateral human rights dialogues are seeing any changes to their sentences—a situation that is especially true for Tibetans and Uyghurs. This extends to medical parole, even for gravely ill individuals like Hu Jia, who suffers from serious liver disease, or Li Wangyang, an activist who has spent nearly all of the past 21 years in prison, much of that time hospitalized because of poor health. On the rare occasion when medical parole is granted to political prisoners, it tends to be as in the case of Zhang Jianhong, whose health under the burden of neuromuscular disease deteriorated to the point where he was unable to breathe without the assistance of a machine.[\[13\]](#)

Perhaps the most outrageous—and telling—example of China’s worsening human rights environment has been the government’s failure to provide a credible accounting of the whereabouts of Gao Zhisheng, the outspoken rights lawyer whose repeated criticism of government policies and defense of Falun Gong practitioners and political activists ultimately landed him a 2006 conviction on charges of inciting subversion by a Beijing court. Given a suspended sentence, Gao and his family were subjected to intense police surveillance, interrupted by a period of detention in late 2007 in which his captors allegedly tortured him so severely that friends said it left him “a broken man.”

In February 2009, shortly after Gao’s wife and two children left China to seek asylum in the United States, Gao disappeared. We now know that for more than a year, he was secretly shuttled from location to location and kept under police custody, during which time he was subjected to physical and psychological abuse. After a sustained period of pressure by the international community, Gao mysteriously reappeared in Beijing this past April and gave two interviews: one, blessed by his captors, in which he announced to the Associated Press he was “giving up activism” and one during an unauthorized meeting with a small group of friends and diplomats in which he described in detail his ordeal over the past year.[\[14\]](#) Several days later, Gao disappeared once more—presumably again into the hands of security agents acting with reckless disregard for individual rights, rule of law, or the consequence of their actions on China’s international image.

I believe that what we are witnessing today is a manifestation of a Chinese leadership that, though it may exude confidence in its dealings with the outside world, sees mounting signs of instability at home in the form of petitioners seeking redress for grievances, growing numbers of mass incidents, eruption of long-simmering ethnic tensions in Lhasa and Urumchi, and the messy, hard-to-control Internet, with its channels for expression of critical opinion and transmission of uncensored news. A sense of imminent and perpetual threat has played into the hands of a hard-line, “stability-above-all-else” element in the leadership, one particularly associated with the security forces, the military, and the propaganda apparatus. Though the factors underlying these developments in China have been primarily domestic, confusion in the international community about how best to engage with “rising

China” on human rights has clearly emboldened some Chinese leaders to pursue certain policies despite international opposition.

For the time being, at least, China’s leadership appears to be pursuing what the Chinese scholar Yu Jianrong has called “rigid stability,” instead of heeding the voices of those inside and outside the Party who advocate taking stronger steps toward establishment of a more legitimate rule-of-law system, one that would weaken the authority of the security forces and see Party oversight of court decisions receding in favor of a more independent judiciary. [\[15\]](#) But as long as the perception remains of a high level of threat from ethnic separatists, hostile foreign forces, mass incidents, and political subversives, this hard-line faction will try to continue to hang on to its remaining strongholds long enough at least to have an influence over the formation of the new leadership group at the 18th Party Congress in 2012.

Notwithstanding the strong position of the hard-liners, proponents of expanding civil rights and further developing rule of law in China still have a voice, particularly via the media. On a few occasions, backlash against local government officials’ abuse of criminal defamation charges to prosecute critics of corruption and malfeasance have forced authorities to acknowledge they overstepped their authority. [\[16\]](#) Major media outlets have been vocal in exposing serious problems such as the use of “black jails” to incarcerate petitioners, mysterious deaths of detainees in police-run detention facilities, and the torture of criminal suspects. [\[17\]](#) There have been stirring calls for reform to the laws governing state secrets and household registration, and last month new rules took effect that should in theory prevent illegally obtained evidence and testimony from being used in criminal proceedings. [\[18\]](#)

In short, there appears to be a constituency within the Party (not to mention among Chinese legal experts and practitioners and the wider population) that supports moving more resolutely along a path of reform, a group that may feel frustrated by the recent lack of progress on political reform and growing reliance on repression. An important goal of our collective human rights engagement with China should be to support the efforts of this constituency, particularly at such a moment when it may feel most embattled.

At this point, I would like to offer the following recommendations:

First, the bilateral human rights dialogue between the United States and China should be enhanced and expanded. To this end, we recommend:

- Doubling the frequency of the dialogue to make it a semi-annual event. This would facilitate the establishment of relationships with Chinese interlocutors and better reflect the importance the US government attaches to the human rights situation in China. A semi-annual dialogue would also match the frequency of China’s human rights dialogue with the European Union.
- Ensuring that detailed, bilingual prisoner lists an integral part of the dialogue process. It is also essential that the US government hold China accountable for responding to these requests for information in a sincere and timely manner.
- Establishing a working group on the rights of political prisoners. Thanks to efforts by the State Department, China has agreed in principle to establish working groups as part of the bilateral human rights dialogue. The United States should actively follow up on this agreement and propose that a working group be established on the rights of political prisoners. The United States must be prepared to engage China critically in the area of human rights. Disagreements can be expected, but engagement must be about more than simply “agreeing to disagree.” It should involve recognizing the value of substantive, critical discussion in which all parties are held equally accountable for their commitments to human rights under international law.

Second, we further recommend that the United States play a more active role in the human rights institutions of the United Nations, including the Human Rights Council and its process of “universal periodic review.” I attended the Human Rights Council’s February 2009 review of China’s human rights situation and was disappointed that the United States chose not to take the opportunity to raise its concerns during that process. Without stronger

leadership and commitment to upholding international human rights law by the United States, there is real reason for concern that this important multilateral institution will continue to allow countries like China to defend their problematic rights records by appealing to “unique national circumstances” and the notion that some human rights are more fundamental than others. The United States should also help to ensure that the treaty-based bodies and “expert-driven” processes of the United Nations continue to play a vigorous role in the monitoring and protection of human rights in all countries, including China.

Our third recommendation concerns taking better advantage of this Commission’s fine Political Prisoner Database. In a 2008 visit to Beijing, Commissioner Christopher Smith and former Commissioner Frank Wolf handed over a list of Chinese political prisoners to the former Chinese foreign minister, Li Zhaoxing. This was the first time that members of Congress had handed over a list of prisoners derived from the CECC database.

This database is an invaluable resource, expertly developed and maintained by Commission staff members, and we are proud to contribute information from our own database to this project on an ongoing basis. We would like to recommend that the Commission encourage members of Congress to make more frequent use of relatively short, focused lists as a routine part of their interactions with Chinese officials.

In conclusion, Mr. Chairman, I’d like to take this opportunity to thank you for your leadership in this area and to pay tribute to the longstanding and close working relationship The Dui Hua Foundation has had with this commission over the past decade. I shall be happy to answer any questions you or other commissioners may have.

Appendix: Selected Statistics on Political Crime in China, 1998–2009
I. Individuals Arrested for Endangering State Security

II. Individuals Indicted for Endangering State Security

III. First-Instance Trials Concluded for Endangering State Security

Source: Data for 1998–2008 come from *China Law Yearbook* (1999–2009). For estimates, see notes 1 and 2 below.

Notes

(Click[↑] after note to return to text above.)

1 See The Dui Hua Foundation, “Official Data Show State Security Arrests, Prosecutions in China Exceeded 1,000 in 2009,” (12 March 2010): http://www.duihua.org/media/press/statements/statement_on_ESS_in_2009.htm. [↑]

2 The Dui Hua Foundation, “Supreme People’s Court ‘Work Report’ Indicates More Trials, Heavier Sentences for Endangering State Security in 2009” (20 July 2010): <http://www.duihuahrjournal.org/2010/07/supreme-peoples-court-work-report.html>. [↑]

3 Ibid. [↑]

4 Verna Yu, “Liu’s Sentence a Grim Warning to Dissidents,” *South China Morning Post* (27 December 2009): A1. [↑]

5 According to statistics collected from the *Xinjiang Yearbook*, ESS trials in the Xinjiang Uyghur Autonomous Region typically accounted for between one-half to two-thirds of the national total during the early 2000s. See The Dui Hua Foundation, *Statistics on Political Crime in the People’s Republic of China: Volume 3, Occasional Publications of The Dui Hua Foundation*²³ (December 2006): 23–24. Provincial data and anecdotal evidence suggest that allegations of espionage may contribute another large portion of China’s state security cases, especially in predominantly Han areas. See The Dui Hua Foundation, *Reference Materials on China’s Criminal Justice System 5* (June 2010): iii, 13–17. [↑]

6 See, for example, documents related to the case of Yang Maodong (Guo Feixiong), in The Dui Hua Foundation, *Selected Decisions From Chinese People's Courts, Occasional Publications of The Dui Hua Foundation* 26 (June 2008) or the case of Shi Weihai, in ChinaAid, "Christian Shi Weihai Sentenced to Three Years in Prison for Printing and Giving Away Bibles" (11 June 2009):

http://www.chinaaid.org/qry/page.taf?id=105&_function=detail&sbtblct_uid1=1212&_nc=28225309e65c49b23121c31f64d3a39e. [↑]

7 See, for example, the case of Qi Chonghuai, in Committee to Protect Journalists, "Chinese Journalist Sentenced to Four Years" (13 May 2008): <http://cpj.org/2008/05/chinese-journalist-sentenced-tofour-years.php>; the case of Wu Lihong, in The Dui Hua Foundation, *Selection of Cases from the Criminal Law, Occasional Publications of The Dui Hua Foundation* 27 (September 2008): 16–18; and the case of Fan Yanqiong et al., in Chinese Human Rights Defenders, "Three Fujian Digital Activists Convicted as Thousands Gather in Landmark Protest" (16 April 2010): <http://chrnet.org/2010/04/16/three-fujian-digital-activists-convicted-as-thousands-gather-inlandmark-protest/>. [↑]

8 See The Dui Hua Foundation (trans.), "Notice Regarding Printing and Distribution of 'Implementation Measures for Assessment of Education and Conversion of 'Falun Gong' Prisoners,'" *Reference Materials on China's Criminal Justice System* 5 (June 2010): 44–48. [↑]

9 See The Dui Hua Foundation, "Professors Yu Jianrong and Jiang Ming'an Spar Over Future of Re-Education Through Labor" (9 July 2010): <http://www.duihuahrjournal.org/2010/07/professors-yujianrong-and-jiang-mingan.html>. [↑]

10 Charles Hutzler, "Chinese Court Sentences US Geologist to 8 Years," Associated Press (5 July 2010); Jerome A. Cohen, "Justice Denied," *South China Morning Post* (21 July 2010). [↑]

11 See The Dui Hua Foundation, "A Day in the Life of a Chinese Defense Lawyer" (9 July 2010): <http://www.duihuahrjournal.org/2010/07/day-in-life-of-chinese-defense-lawyer.html>; Maggie Chen, "Freedom of Speech Defence Bound to Fail," *South China Morning Post* (7 June 2010): A6; and The Dui Hua Foundation, "Only in China: 'Adjudication Committees' Serve Judicial System," *Dialogue* 39 (Spring 2010): 6–7. [↑]

12 See The Dui Hua Foundation, "Chan Yu-lam Sentence Reduction Sheds Light on How Prisoners Are Rewarded for Good Behavior" (8 August 2009): <http://www.duihuahrjournal.org/2009/08/chan-yulam-sentence-reduction-sheds.html> [↑]

13 See The Dui Hua Foundation, "Systemic Sickness: Diagnosing the Ills of Medical Parole in China," *Dialogue* 39 (Spring 2010): 1–3. [↑]

14 Charles Hutzler & Isolda Morillo, "Crusading Chinese Lawyer Gives Up Activism," Associated Press (7 April 2010); Paul Mooney, "Beijing's Mafia Justice for Lawyer They Won't Lock Up but Can't Set Free," *South China Morning Post* (13 June 2010): A12. [↑]

15 See China Digital Times, "Yu Jianrong: Maintaining a Baseline of Social Stability" (6 March 2010): <http://chinadigitaltimes.net/2010/03/yu-jianrong-maintaining-a-baseline-of-social-stability-part-i/> (first of a multi-part series of translations). [↑]

16 See Joshua Rosenzweig, "China's Battle Over the Right to Criticize," *Far Eastern Economic Review* (May 2009): 12–15. [↑]

17 Andrew Jacobs, "A Rare Chinese Look at Secret Detentions," *New York Times* (27 November 2009): A10; Human Rights Watch, "An Alleyway in Hell": China's Abusive Black Jails (12 November 2009); The Dui Hua Foundation, "Zhejiang Daily Compiles Morose Compendium of 'Unnatural Deaths' in Detention" (25 June 2010): <http://www.duihuahrjournal.org/2010/06/zhejiang-daily-compilesmorose.html>; The Dui Hua Foundation, "Zhao Zuohai Case Provokes Responses on Legal Protections from Chinese Public, Government" (2 June 2010): <http://www.duihuahrjournal.org/2010/06/zhaozuohai-case-provokes-responses-on.html>. [↑]

18 These rules have been translated by The Dui Hua Foundation: <http://www.duihua.hk/hrjournal/evidence/evidence.htm> [↑]
