



Remarks to the Congressional-Executive Commission on China

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Human Rights And The Rule Of Law

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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 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 Liaoyang⁷ 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 Daqing 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 amendments as a move towards 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 UN 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.

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 towards 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 built. 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 International 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 UN 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.

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 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.

⁴ The World Bank reports that in many northeastern cities, unemployment is as high as 40%. 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 two 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.

¹²Trade 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, at http://iso.china-labour.org.hk/iso/article.adp?article_id=1976&category_name=Labour%20Laws

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

¹⁴The 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.

¹⁶Lawyers 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>

¹⁷Adopted 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.

¹⁸Article 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.

¹⁹This 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>.

²⁰The 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>

²³This 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 towards 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%2001.doc. The graveness of such intimidation is

illustrated, for instance, by the case of **Xu Jian**, a labor lawyer who was sentenced to four 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.

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 dialogue, including social bargaining.