

**CURRENT CONDITIONS FOR HUMAN RIGHTS  
DEFENDERS AND LAWYERS IN CHINA, AND  
IMPLICATIONS FOR U.S. POLICY**

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**ROUNDTABLE**  
BEFORE THE  
**CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA**  
ONE HUNDRED TWELFTH CONGRESS  
FIRST SESSION  
JUNE 23, 2011

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## **CURRENT CONDITIONS FOR HUMAN RIGHTS DEFENDERS AND LAWYERS IN CHINA, AND IMPLICATIONS FOR U.S. POLICY**

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**THURSDAY, JUNE 23, 2011**

CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA,  
*Washington, DC.*

The roundtable was convened, pursuant to notice, at 2:13 p.m., in room 328A, Russell Senate Office Building, Senator Sherrod Brown, Cochairman, presiding.

Also present: Senator Jeff Merkley and Nisha Desai Biswal.

### **OPENING STATEMENT OF HON. SHERROD BROWN, A U.S. SEN- ATOR FROM OHIO, COCHAIRMAN, CONGRESSIONAL-EXECU- TIVE COMMISSION ON CHINA**

Senator BROWN. Thank you for joining us today. We really appreciate the attendance of all of you. It's my pleasure to welcome everyone to this important roundtable on "Current Conditions for Human Rights Defenders and Lawyers in China, and Implications for U.S. Policy."

Commissioner Merkley will be here shortly, I believe. I'm not sure that Nisha Desai Biswal is here yet. She is the Assistant Administrator for Asia at the U.S. Agency for International Development [USAID]. I believe she will join us, too.

I've been a member of the Congressional-Executive Commission on China since 2002 after the House and Senate passed permanent normal trade relations [PNTR] with China. The Commission has done excellent work in raising awareness about human rights and the rule of law in the People's Republic of China. I was honored to be appointed cochair of this Commission in early May.

The Commission monitors developments in China closely and creates records of cases of political imprisonment in China. This year alone the Commission has created over 400 records for the Commission's Political Prisoner Database.

In addition, in 2011, the Commission has already published 39 reports on human rights and the rule of law in China, and is now preparing its annual report due out in October.

As cochair, I am privileged to host this roundtable on such an important and timely issue. There are a number of Commission vacancies. I hope that they will be filled soon. In the meantime, I want to ensure anyone that is interested in the Commission's work, that it will continue and that the outstanding staff has continued

this important mission. When all the Commissioner slots are filled, we will begin the robust agenda of hearings and roundtables.

Before we get started, I'd like to thank Doug Grob behind me, the Staff Director, who will be leaving the Commission, for his tremendous service to our country. I look forward to working with him in his new role. Thank you for all that you've done with this Commission.

I'd also like to thank Lawrence Liu who, when I have to leave in about 30 or 40 minutes, will chair this roundtable. Many of you know him very well, having served as Acting Staff Director for the foreseeable future.

Also, I wanted to introduce Wei Jingsheng, who walked the halls of Congress with me and others in 1999 and 2000 in opposition to the congressional vote that took place, and I appreciate his courage, two decades of courage, that he showed in China and his activism since in Canada and in our country, and I'm so appreciative that he has joined us.

Our work continues. This roundtable is not only timely, but critical to the U.S.-China relationship. In February of this year the Chinese Government launched one of the harshest political crackdowns in years. Just in the last four months, hundreds of citizens have been interrogated, placed under illegal house arrest, sent to labor camps, or detained. More disturbing has been the so-called disappearance of more than 20 Chinese citizens. Officials have simply taken them away without saying why or where they're being held. Detained outside of the legal process, they obviously face the risk of torture.

Those targeted include many of China's most prominent rights advocates, lawyers, whistleblowers. They include the well-known artist, Ai Weiwei. Ai has advocated on behalf of schoolchildren killed in a devastating earthquake. Chinese police detained Ai in April. He was just released on bail this week. We know that's not really real release and we still are concerned about him and still not happy with what has happened to him, even with being released on bail.

The government has also detained people like the human rights lawyer Teng Biao. Teng is a well-known law professor at one of China's top universities. When not teaching, he is a tireless advocate for some of China's most vulnerable. He has helped defend poor, indigent, criminal suspects and has advocated for enslaved child workers. In February, Teng disappeared for months and only resurfaced recently.

In any modern society, brave and noble citizens such as Ai and Teng would be celebrated. Why does the Chinese Government, we ask, consider them enemies? What does this crackdown mean for human rights lawyers and for activists who follow in their footsteps? What role has the Internet and social media played in the crackdown? What does the Chinese Government's disregard of its own laws in these cases, a disregard well-documented by this Commission, mean for legal reform and the rule of law in China, and how should the United States respond?

As we begin, I'd like to introduce the other participants in the roundtable and ask each of them for their comments, and then we'll begin to do questions and discussion. Let me start with

USAID's Nisha Biswal. If you would be willing to start, Nisha, with your comments. Are you ready or do you want to wait a minute? Okay. Okay. Fair enough. Thanks. Welcome. Good to see you again.

To my right is Elisabeth Wickeri, who is Executive Director and Adjunct Professor of Law at the Leitner Center for International Law at Fordham Law School. Professor Wickeri is also a member of the Committee to Support Chinese Lawyers, and has published numerous articles on human rights and civil society.

Elisabeth, why don't you begin. Then I'll go around the table this way and end with you, Nisha.

Welcome.

**STATEMENT OF ELISABETH WICKERI, EXECUTIVE DIRECTOR  
AND ADJUNCT PROFESSOR OF LAW, LEITNER CENTER FOR  
INTERNATIONAL LAW AND JUSTICE, FORDHAM LAW  
SCHOOL; AND EXECUTIVE DIRECTOR, COMMITTEE TO SUP-  
PORT CHINESE LAWYERS**

Ms. WICKERI. Thank you. Thank you, Mr. Chairman. I am really grateful for the opportunity to participate in today's roundtable and for your leadership on this important topic. I'd like to thank you, your fellow Commissioners, and the CECC staff for inviting me here.

I'm here today representing the Leitner Center for International Law and Justice at Fordham, and specifically the Committee to Support Chinese Lawyers, which is an independent nongovernmental organization [NGO] housed at the center.

The Committee is a group of lawyers from outside of China whose mission is to support lawyers in China in their quest to support the rule of law there. We do this through public education, research, advocacy, and outreach.

Today's roundtable is extremely timely and important because the conditions for rights defenders and human rights lawyers in China are in flux. Since February 2011, following online calls for a "Jasmine Revolution," rights defenders and lawyers have been increasingly detained, disappeared, abused, and subject to a range of strict methods of surveillance and control—and this even after their release.

In my comments today I would like to, in particular, highlight the especially pronounced chilling effect that this suppression has caused. I will suggest that individuals that have been most seriously impacted are still in need of public calls for support, and attention to their cases by governments, as well as other actors.

Concern for human rights defenders and lawyers in China is not something we come to anew today. Indeed, on many occasions over the past several years we have had cause to voice our concerns about the difficult position for these actors in China. For example, in the run-up to the Beijing Olympic Games, during important visits to Beijing by dignitaries on sensitive historical dates such as June 4, and of course in the wake of the announcement that Liu Xiaobo would receive the Nobel Peace Prize, activists would be confined to their homes, brought in for questioning, and barred from leaving the country. But these conditions were generally loosened following the completion of the sensitive moment. Seasoned rights

defenders and human rights lawyers, used to these modes of harassment, would generally return to their work upon release.

However, in the four months since February of this year, the situation has deteriorated significantly, in particular for the human rights lawyers who have, among other things, taken on the most unpopular criminal defense cases. This deterioration represents a marked shift in at least two ways, I think. First, the breadth of the crackdown that led to the detention and disappearance of so many individuals—as you mentioned, at least 20 disappearances and detentions, many more people harassed and people put under surveillance.

Second, in the wake of the eventual releases of these individuals, there is an eerie silence among lawyers and other defenders who had previously remained vocal and outspoken in carrying out their work that was admittedly already unpopular with the authorities. Even casual meetings for lunch or coffee have become difficult to arrange because of the fear of associating with others working in the field. This is especially true, of course, for meetings with foreigners.

The result of these two differences has been a substantial chilling effect and a reduction in the space available and people willing to carry out human rights and legal advocacy in China.

The fact that lawyers and rights defenders have come out of detention less willing to return to work tells us a little something about their experiences before, during, and after detention. Many were simply disappeared as opposed to being formally detained. Reports emerged about serious mistreatment, abuse and torture while they were held.

On release, people have had to sign statements admitting guilt or promising to behave. In the aftermath of their detention, they and family members have lived under very strict conditions, ranging from constant surveillance to family members being arrested with the defender, to young children not being permitted to leave home to attend school.

And as troubling as these stories are, it is the silence among formerly outspoken and energetic lawyers that is especially troubling to me and suggests that in the immediate aftermath of this crackdown, legal advocacy and human rights work in China is stalled. It has become more difficult in particular to find lawyers who are willing to take on sensitive cases, including where lawyers themselves are accused of a crime.

Shanghai-based lawyer Li Tiantian, who was disappeared on February 19 and reemerged on May 24, is one of the few individuals who has spoken out about her experience. She noted on Twitter that “the kind of fear that you can describe is small, while the kind of fear that you can’t speak of is the greatest.”

Lawyers are important, not because they are lawyers, per se, but rather because they have a multiplier effect with respect to human rights promotion and protection. They play a fundamental role within the system, protecting the rights of other civic actors, vulnerable citizens, and activists. Their special role, however, also makes them the target of attacks by the authorities.

Well before February this year, human rights lawyers in China faced serious challenges to fulfilling their professional responsibilities.



ities through legal and procedural obstacles, intimidation and abuse, and extralegal attacks. This treatment of lawyers gives us a vital window into what is happening in China today.

The significance of the fear that Li Tiantian speaks of cannot be understated. The role of human rights lawyers does not rest solely on whether or not their cases are successful. Indeed, these successes may be few and far between. The importance, rather, is based on the possibility of their success when they are able to try.

So what policy implications emerge from this? I have four preliminary thoughts. First, that more voices, including those from the U.S. Government, are needed to call attention to the many individuals that have been targeted in this recent wave of attacks. Through this attention they may be supported and provided some more space to work. This includes public calls, as well as sustained private dialogue with Chinese actors, official and unofficial.

Second, that international standards promoting the rights and freedoms of human rights defenders and lawyers should be promoted and used to demonstrate how lawyers' rights and others' rights are being curtailed. Specifically, the U.N. Basic Principles on the Role of Lawyers, which members of the U.N. General Assembly, including China, adopted without dissent, are useful and can also support existing Chinese domestic laws.

Third, expanding opportunities for the training and exchanges of Chinese lawyers with colleagues abroad remains an important avenue and provides space for much-needed dialogue, but these must also include Chinese lawyers doing rights defense and other public interest work.

Fourth, as Professor Jerome Cohen, a member and Senior Advisor to our Committee to Support Chinese Lawyers has increasingly emphasized, there is a need for foreign lawyers, many of whom benefit from doing business in China, to stand up and speak out for their Chinese colleagues.

Finally, I'll end on what I hope are two somewhat positive notes. First, there are some well-connected lawyers and legal scholars who have begun to express concern for their marginalized colleagues. These can only benefit from being supported by other expressions of support inside and outside of China.

Second, I was also happy to see, somewhat hesitantly, that Ai Weiwei was released yesterday. An advocate for change, it is troubling that he was detained for so long with so little information about his condition. But it is a case that perhaps demonstrates how sustained media attention and public calls can have positive results.

Again, I'd like to thank you for this opportunity and I'm happy to answer any questions you and others may have.

[The prepared statement of Ms. Wickeri appears in the appendix.]

Senator BROWN. Thank you, Ms. Wickeri.

Xiaorong Li is an independent scholar who has published numerous articles on topics including human rights and democracy. Since 1989, she has served as an executive director on the boards of human rights organizations which she has co-founded.

Thank you for joining us.

# **STATEMENT OF LI XIAORONG, INDEPENDENT SCHOLAR**

Ms. Li. Thank you. Thank you all.

The serious backsliding of the Chinese Government's human rights records started before the 2008 Summer Olympics, highlighted with the jailing of activists Hu Jia, Huang Qi, and many others; torture and disappearance of lawyers Gao Zhisheng; imprisonment of Nobel Peace Prize Laureate Liu Xiaobo, and the house arrest of his wife, both incommunicado; and the house arrest of Chen Guangcheng after his release.

Yesterday's release of the artist Ai Weiwei on bail, waiting for trial, was in the same fashion as his arrest, with total disregard of the Chinese law. All this took place in the larger context of increasingly severe restrictions on freedom of expression and association, repression against religious and ethnic minorities, and significant roll-back on the rule of law reform.

Since February, according to the information documented by the group Chinese Human Rights Defenders, the Chinese Government has criminally detained a total of 49 individuals outside of the Tibet and Xinjiang regions. As of today, 9 of them have been formally arrested, 3 sent to reeducation through labor camps, 32 have been released, but most of them are not free, out of which 22 have been released on bail to wait for trial, while 4 remain in criminal detention.

In addition, one individual is being held in a psychiatric hospital and one lawyer remains under residential surveillance in an unknown location. At least 24 individuals are confirmed as having been subjected to enforced disappearance, some for as long as 70 days, and at least 10 of them remain unaccounted for as of today.

Given the difficulties in collecting and verifying information, these numbers are far from being complete. There are unconfirmed reports that extremely nervous authorities at the top approved a list of thousands of individuals as the targets of the "Jasmine Revolution" crackdown.

I particularly want to draw your attention to the fact that the Chinese Government extensively and ostentatiously used extrajudicial tactics, such as enforced disappearance, secret detention, and torture in the current crackdown, in clear violation of the International Convention Against Torture, which the Chinese Government signed and ratified in 1988.

The abuses included beating, use of electric batons on genitals, sleep and food deprivation, repeated interrogations on locations for up to 20 hours at a time, forcible injections, including injection of unknown substances, and forced distressed positions, such as sitting motionless on small stools for many hours at a time, and intimidation on the safety of their families, and so on and so forth. These are documented, but we cannot make public who provided the information, who specifically underwent which torture treatment because the victims were threatened with severe consequences if they talked about what they went through.

What impact does this have on U.S. policy toward China? The Chinese Government has fought back at criticisms, has threatened with economic sanctions of its own. That should be expected, but that is not a reason for the U.S. Government to give up public pressure and replace it with closed-door dialogue and strategic partner-

ship with China. We see very little as to what, if any, concrete outcome is achieved through the U.S.-China human rights dialogues.

Though the Obama Administration has been unusually outspoken about China's rights abuses since its second year in office, the dialogue seems to do more to appease critics of complacency than to secure any real change. It is a diversion from the fact that nothing of consequence is being accomplished because the Chinese Government knows there is nothing to fear from delivering no concrete results. The government even welcomes closed-door dialogues because they remove the spotlight from exposing China's human rights abuses.

The Chinese Government loves to cite the existence or resumption of dialogues as signs of progress on human rights. The Chinese Government clearly lacks any political will in this to curtail its violations. Any quiet diplomacy and behind-the-door engagement must be coupled with public pressure. Dialogue and cooperation can be useful, but only when the partner government shows political willingness to improve. The U.S.-China human rights dialogues must be tied to concrete and publicly articulated benchmarks if it is going to continue.

These benchmarks should not be ignored when they prove inconvenient, or get in the way of U.S. economic and strategic interests. Substantive international pressure can make a big difference, as we see in the release of Ai Weiwei, by exposing or condemning abuses, conditioning access to military aid, imposing targeted sanctions on abusive individual officials, and calling for prosecution of those responsible, the U.S. Government can increase the cost to the Chinese Government for harassing activists and lawyers.

International pressure can help create space for local activists to push the government to reform, and we have been told over and over again by those prisoners of conscience released from prison that when they knew there was such help from outside and international pressure on their cases, they did feel encouraged to fight on and knew that they were not there alone.

Thank you.

[The prepared statement of Ms. Li appears in the appendix.]

Senator BROWN. Thank you, Ms. Li.

Sarah Cook is the Asia Research Analyst and Assistant Editor for Freedom on the Net at Freedom House. She has extensively researched the human rights situation in China and co-edited the English translation of a memoir by Gao Zhisheng, the prominent rights attorney who remains missing.

Thanks, Ms. Cook.

**STATEMENT OF SARAH COOK, ASIA RESEARCH ANALYST AND ASSISTANT EDITOR, FREEDOM ON THE NET, FREEDOM HOUSE**

Ms. COOK. Thank you very much, Mr. Chairman, and thank you very much to the CECC for inviting me here today.

One of the topics I have been asked to speak about today is the Internet dimension of the work of Chinese human rights lawyers and the repression that they've faced, as well as to reflect on some of the underlying dynamics that have contributed to the latest crackdown.

I thought I would focus in my remarks on three points: (1) how human rights lawyers and activists have used the Internet and social media in China; (2) the Internet controls these individuals have faced and how these are actually a microcosm of a broader and very robust system of Internet control; and (3) how the long-term practice of the Chinese Communist Party using arbitrary, extralegal measures to suppress freedom of expression has actually laid the foundation for this recent crackdown.

As in many countries, when you go down the list of China's leading human rights lawyers and activists, almost every single one of them has used the Internet in very creative ways to expose human rights abuses, educate fellow citizens about their legal rights, and advocate for rule of law reforms.

For example, Gao Zhisheng published open letters documenting the torture and killing of Falun Gong practitioners. Xu Zhiyong blogged about the inhumane treatment meted out to petitioners, particularly in "black jails." Teng Biao used Twitter to be able to alert fellow netizens when he was being arbitrarily detained, and Ai Weiwei produced a video of people reading the names of children who had died in the Sichuan earthquake, and then circulated it online.

But what is different from the dynamics in democratic settings, and what makes these efforts even more impressive, is the fact that these people are engaging in such activities in the context of the most robust, sophisticated, and multi-faceted Internet censorship apparatus in the world, an apparatus that, according to a study that Freedom House released in April, has actually tightened and been enhanced over the past two years.

When one looks at these particular individuals, and even the examples I just noted, one finds that they have encountered the gamut of Internet controls that play out in China today, from blocked Web sites to disabled blogging accounts, from "invitations" to tea, to more lengthy enforced disappearances and torture. Many of them keep multiple blogs because they have to play a hide-and-seek game with censors, hoping that even if commentary on one blog happens to be deleted, perhaps another blog hosting company will be a bit more lenient.

So, for instance, for Gao Zhisheng to be able to post an open letter or for Teng Biao to use Twitter, the first thing they have to do is safely get to the other side of the so-called Great Firewall. Ai Weiwei and Xu Zhiyong both had their blogs shut down in 2009 and 2010. And in late 2010, dozens of lawyers and activists had their personal Internet and mobile phone communication ability completely shut off in an apparent effort to stop them from spreading the news about Liu Xiaobo's Nobel Peace Prize. Then there are the offline tactics, as we've heard.

Although the latest detentions have been the longest, over the past five years, most of the individuals that we've been speaking about have at one point or another encountered some form of abduction, beating, or torture, including being shocked with electric batons.

One particularly insidious dynamic that I thought would be worth noting is that as these real-world measures against them have escalated, in some instances we've seen a corresponding im-

plementation of censorship related to these individuals' names, essentially an attempt to make them disappear in the virtual world as well as in the real world.

So, following Ai Weiwei's abduction in April, censorship was not only applied to his name, but there are leaked censorship directives that indicate there were orders to delete within 10 minutes an editorial that made a veiled reference to Ai Weiwei's work and advocacy on the Sichuan earthquake.

Gao Zhisheng, who has been disappeared for over a year, had his name specifically listed as a sensitive key word on the list of such words leaked by an employee of Baidu, the largest search engine in China, in 2009. A quick test that we at Freedom House had conducted shows that a search of Gao Zhisheng's name on Baidu, produces mostly state-run news sources referring to him as a "criminal." There are no links to his own writings.

What is striking in the case of both of these men is that in an earlier era they were actually the subject of quite a bit of official support and media attention. So, Gao Zhisheng, in 2001, was named one of the top 10 lawyers in China in a televised legal debate competition hosted by the Ministry of Justice.

Ai Weiwei, as many of you may know, was invited to design the Bird's Nest for the 2008 Beijing Olympics. But a few years later, as their advocacy increased and they started touching on some of the human rights abuses that the Chinese Government wants most hidden, the state is now hoping that people will forget that they exist as well.

So why is this happening? As other panelists have noted, we at Freedom House have also observed in our various assessments of political rights and civil liberties a backsliding in the Chinese Government's commitment to the rule of law since 2006, and even more so since 2008.

But what is worth noting is that even during the earlier part of the decade when limited legal reforms appeared to be moving forward, in parallel there still existed a very extensive extralegal world, a world of makeshift detention centers, forced labor camps, and plainclothes police forces torturing with impunity. In fact, that is the world that tens of thousands of petitioners and Falun Gong practitioners have been experiencing for years.

Many of the lawyers that we're talking about today actually encountered that world and they talk about it in their writings, voicing concern that the tactics and strategies developed to suppress one group can be quickly and easily applied to others, putting every Chinese citizen at risk.

So, looking at the current series of abductions, they cannot be viewed in a vacuum. Rather, what we're seeing manifest in recent months is an expansion of suppression. It is a reflection of a decision taken somewhere at the top of the Party that a group of individuals whose work and activism had previously been tolerated are now persona non grata, and that the Party is willing to apply the full force of a preexisting, extralegal, repressive apparatus to silence them. Of course, such a decision is made possible by the fact that Party leaders are unconstrained by institutional mechanisms, like an independent judiciary.

From that perspective, I think if Gao Zhisheng and some of the other lawyers were here today, one thing that they would recommend is for U.S. policy to go beyond focusing only on them, despite the urgency of their plight. When you read their writings, you see that they urge serious action to address the full range of clients and causes they have defended.

Taken together, the victims of Communist Party repression go far beyond dozens of activists, amounting to tens of millions of people. As Ms. Wickeri noted, the lawyers themselves have encountered many of these abuses and represent a microcosm of what is happening much more broadly in China.

The lawyers would say that when the day comes that these people have their rights protected, that is when lawyers will no longer need to worry about being abducted or disbarred either. So, one of the main recommendations we would offer is to really give serious thought to what are some of the longer term strategies the United States can adopt to more effectively address the broader range of human rights abuses in China, particularly those suffered by the most vulnerable and abused groups, such as petitioners, Falun Gong practitioners, Uyghurs, Tibetans, and others who are often caught up in this extralegal world.

I have some other recommendations I have thought of, but I think my time is up so I will stop there. I would be happy to expand on any of the above during Q&A.

[The prepared statement of Ms. Cook appears in the appendix.]

Senator BROWN. Thank you, Ms. Cook. And we'd like to have your recommendations for sure in writing, if not spoken also.

We are joined by Senator Merkley from Oregon. Thank you, Jeff, for joining us.

Margaret Lewis, Associate Professor of Law at Seton Hall. Her research focuses on the intersection of Chinese legal studies with criminal procedure, criminal law, and international law. She is a Public Intellectuals Program Fellow with the National Committee on U.S.-China Relations.

Thank you for joining us, Ms. Lewis.

#### **STATEMENT OF MARGARET K. LEWIS, ASSOCIATE PROFESSOR OF LAW, SETON HALL LAW SCHOOL**

Ms. LEWIS. Thank you, Mr. Chairman and distinguished members of the Commission for inviting me to join this roundtable, and for all of the work of the Commission on helping Americans to understand China better, including these specific issues at hand.

In my brief opening remarks, I've been asked to place the recent crackdown in the broader context of what this means for overall legal reform and rule of law developments in China, specifically with regard to criminal justice reforms.

The path of legal reform in China never did run smoothly, but I think that it is fair to say that now is a particularly challenging time for legal reform in China. In part, this reflects the over-arching political climate that emphasizes stability and is wary of anyone who is seen as rocking the boat.

A week from tomorrow, July 1, marks the 90th anniversary of the founding of the Chinese Communist Party. The Party has demonstrated, I think, impressive adaptability over its six decades of

uninterrupted rule. Now, despite reports about some disagreements among the high leaders of the Communist Party, what the public face has been is orderly transition on a periodic basis. This was seen in the early 2000s when we went from the third generation to the fourth generation leaders, and is currently playing out to the fifth generation leaders.

As the composition of the Politburo Standing Committee and the top leadership is taking shape, I think it is not surprising that candidates for the next generation of leadership are going to take a risk-averse stance when it comes to advocating for significant reforms, especially if those reforms might be unpopular with the current leaders. Looking beyond the immediate term, the current and rising members of the Party leadership have openly applauded the harsh law and order tactics used by Bo Xilai, who is the Chongqing Party secretary and a rising star on the national scene.

This praise for Bo's tactics raises serious questions, whether even after the leadership transition takes place will we see a more pro-reform climate. Exacerbating this cautious climate is the leadership's awareness about the popular unrest in the Middle East and the concern that fermenting discontent at home could blossom into China's own "Jasmine Revolution."

It is difficult to qualify and figure out exactly how much public discontent is out there. We know that there are thousands and thousands of mass incidents. But at a minimum, what we're seeing out of Beijing is a change in rhetoric; they are not just talking about harmonious society, which is even on the front of trains now, but emphasizing social management and stability. Social management means keeping a lid on things.

From a legal reform perspective, my concern is that the government fundamentally views lawyers as undermining stability rather than improving it. When I was in China last month, I personally was struck by the hesitancy—and Ms. Wickeri mentioned this too—of people to speak candidly about legal reforms in a variety of meetings. This is even markedly worse than when I was there last year. There has been a shift in attitude and people are seeing a chilling effect about what kind of conversations we're able to have, even in unofficial settings.

Turning particularly to how this climate impacts criminal justice reforms, there is no shortage of formal laws and regulations on the books. In fact, this past year we saw some ostensibly promising reforms. With respect to the criminal law, there was an amendment to the large criminal law this spring that reduced the number of death-eligible crimes by 13, limiting it now to 55 offenses as opposed to the prior 68.

In reality this decrease is unlikely to have a real effect on the number of executions because the crimes they removed were seldom used anyways, so it looks much better than it probably will be in practice.

As a further example of legal reforms in the criminal justice realm, this past year we also saw two new sets of rules dealing with evidentiary issues, and in particular an ability to suppress illegally obtained evidence and, most conspicuously, coerced confessions.

The problem is, the lawyers that are actually trying to seek to implement these rules are running into political road blocks. At most, we've heard of maybe one or two examples of a lawyer actually being able to suppress illegal evidence, and even in that case I guess the evidence got in through another route so it had little practical impact.

In addition to the substantive challenges of the lawyers trying to be zealous advocates for their clients, what also is happening is the lawyers themselves are ending up being the criminal defendants. We saw this in 2010, most notably with lawyer Li Zhuang, who was actually convicted for encouraging people to give false testimony.

Considering such perils and also the general lack of social prestige for defense work, I think it's a wonder that people pursue careers as criminal defense lawyers in China at all, especially outside of the world of relatively financially lucrative white-collar crime.

But in speaking about the role of lawyers, it bears emphasizing that the topic of today's roundtable is the current conditions of both lawyers and rights defenders. As a member of the legal profession myself, I hope that all lawyers seek to defend people's rights. But in China, so-called rights defenders go beyond licensed lawyers. There is a separate population of non-lawyers who are nonetheless seeking to use the legal system to effectuate change in China.

Of course, exemplifying this is the blind activist Chen Guangcheng, who taught himself enough law that he could help out his fellow villagers with their grievances against the government. But since completing his four-year sentence for disturbing traffic and damaging property, Chen and his family have been held under informal house arrest and reports of government-sanctioned physical abuse underscore that the term "soft detention" utterly fails to capture the harsh reality that is Chen's post-prison life.

Going forward, a key question is how can the PRC government manage expectations of the populace in the face of a greying population, growing environmental pressures, and other destabilizing effects. The incorrigible long-term optimist in me wants to believe that the government will eventually view lawyers as a positive force to help express citizens' grievances and effectively channel those grievances through a formal process instead of leaving people to go to the streets with their frustrations. However, at present the emphasis is on the rhetoric of the rule of law with a reluctance to allow people to actually make use of the laws in a meaningful way.

So finally, what are the implications for U.S. policy in light of this challenging landscape? The official U.S.-China human rights dialogue and the slightly less official legal experts dialogue are valuable, I think, for maintaining high-level bilateral discussions, though I think we must keep our expectations very modest when it comes to how these forums might actually spur legal reform in China.

Though we cannot expect instant gratification from more informal legal cooperation, I remain convinced that sustained interpersonal contacts will serve as a positive force for legal reform. For example, China's efforts to reduce wrongful convictions opens up possibilities for collaboration on projects regarding evidence techniques, including use of DNA evidence. Indeed, the new rules ad-



addressing the exclusion of illegally obtained evidence followed years of comparative legal work and many projects involving foreign assistance.

The scope of substantial bilateral collaboration is no doubt limited at present, but there are shared avenues of interest that dovetail with the Chinese Government's stated areas of reforms and that can, and should, be explored.

Thank you for the opportunity to present a few thoughts. I look forward to our discussion.

[The prepared statement of Ms. Lewis appears in the appendix.]

Senator BROWN. Thank you very much, Ms. Lewis.

I will open the questioning and then turn it to Senator Merkley, who will chair the Commission after I leave.

Ms. Li and Ms. Wickeri, your comments on sort of an array of things in terms of how important it is that the American Government and individual American elected officials and activists speak out, and what that means to prisoners, and what that means to human rights activists, is noted. Your comments that in some sense though the Chinese think they have nothing to fear because there is not much oomph behind our speaking out here in terms of what our government did. I heard your comments about President Obama and sort of what we do or don't do as a country, and how activists and people who have been imprisoned or on bail, how they're encouraged by international support. I hear all of that.

I remember 10 years ago, when Wei Jingsheng said to me as we were talking about PNTR, he made a statement which was a bit incendiary, but with great insight, I thought. If I could recall more or less exactly how he said it, although he said it in Mandarin and it was translated, obviously. He said the vanguard of the Communist Party in the United States is American CEOs, as they were lobbying the U.S. Congress for PNTR.

Are American lawyers—not human rights lawyers—in China today working for U.S. corporations, are they potentially allies of any of these human rights activists? Are they allies for other lawyers? Are there ways that we can reach them in a way that they will stand up for human rights in China or are they a lost cause because they do not want to jeopardize their position in the larger Chinese economy? And any of the four, you can answer that, but I'm looking at you two because you kind of led me to asking that.

Ms. Li. Well, I certainly believe they can be a force for the good cause. I don't want to make any sweeping statement to lump them all into one category or another.

Senator BROWN. Well, let me interrupt if I could. Have you seen examples of it where that has happened, any of you? The more important issue is, how do we make that happen?

Ms. Li. The thing is how individual American businessmen, lawyers, and anybody that goes to China doing something, what can they do? That's the larger question. I believe, in talking to a lot of activists, including Mr. Wei here who probably agrees with me, we need to change the system in China. What we all as individuals can do is to prepare for that change.

We cannot, by any one of those professional groups in China from America—nobody can really change until the system itself has itself been changed. So in a way, lawyers, for example, going to

China could be putting Band-Aids on a very sick system by saying, okay, “improve your prison.” For what? So the authorities can be more efficient to manage prisoners? Or telling authorities “improve your police force.” But again for what? So they can be more effective in crowd control when faced with protesters?

Those things can be helpful when the system changes, but if the system doesn’t change, all those things, years, years, more than 20 years, the United States has been pouring humongous resources into the “rule of law reforms” in China, training judges, policemen, prison guards, and legislators—as if those legislators have any independence. All those are the same for the Chinese activists: they have the outcome, perhaps unintended, of aiding a repressive machine. But somehow we need to look at the bigger picture.

What happened in Egypt, in Tunisia, was that citizens had somewhat more space to organize, assemble, and express their views than citizens in China. I heard that there was a training workshop on nonviolent protest tactics for civil society activists last year in Cairo. That sort of work became crucial. It’s the sort of work that is useful when the bigger movement comes when the system started to crumble. Those preparations in civil society can kick into place. In that sense, I support people going to China to impact civil society, whether while at the same time doing business, training officials, whatever they do. But it’s the fundamental piece that’s missing here if they only deal with authorities or official outfits alone. The problem is we still don’t see a systematic U.S. Government human rights policy toward China. How do we prepare for the kind of crumbling of the system, like what happened in Egypt?

Senator BROWN. Ms. Wickeri—sorry to cut you off. The wealth that U.S. companies and U.S. consumers are helping to create in China, the argument against what Wei Jingsheng said a decade ago was that as there’s more companies there and more wealth and more of a middle class, that freedom would follow. There are many examples in history where that didn’t happen, but that was the argument they made. Is that happening? Is there a way of helping to make that happen? Is there a way of empowering or encouraging U.S. corporate lawyers, for want of a better term, to step up and work on all the things that the four of you have devoted your professional lives to?

Ms. WICKERI. Yes. Certainly one of the things that the Committee to Support Chinese Lawyers was founded for was to try and tap the resources of that community, of the community of corporate lawyers and other business people working inside China and benefiting from that work. It is not an easy task to make the issue of the role of human rights defenders and the crackdown on human rights lawyers relevant to corporate lawyers working for American law firms in Beijing. There have been a lot of informal conversations, but in terms of constituting formal meetings in Beijing—or even less so elsewhere in the country—among American lawyers to raise their awareness on this issue, that’s much more difficult.

On the other hand, the Committee to Support Chinese Lawyers, as well as the New York City Bar Association, has instituted a number of meetings in New York to try and raise the awareness of corporate lawyers who have offices in Beijing about these issues. So we’ve been doing that, particularly this year. The New York

City Bar, the International Bar Association, and a number of other professional associations have written letters to highlight the cases of these individuals.

Whether or not individual lawyers will take on this task too, or if law firms will, is another question. I think many of us may have seen Professor Cohen's opinion piece in the South China Morning Post a couple of weeks ago that looked especially at this issue, that despite the fact that a lot of different actors had spoken out on the recent crackdown, law firms have been conspicuously silent about the fact that their Chinese colleagues were being especially abused.

Senator BROWN. Does Google's about-face give you hope or make you cynical?

Ms. WICKERI. I'm a hopeful person in general.

Senator BROWN. Good answer.

Ms. WICKERI. So I think that I have to answer the question that way. Certainly the New York City Bar, as well as the Committee to Support Chinese Lawyers, are trying to encourage law firms that have practices in China—to take a stand on this issue. We're just in the early stages of reaching out to interested parties, so I cannot yet predict whether or not the Google example will be one that they look to.

Senator BROWN. Okay, then, I'm going to turn it over to Senator Merkley to chair. But I'd like all four of you to think about what this Commission can do to help empower and encourage American lawyers, whether they are law firms, whether they're corporate counsel, here and in China to step up on human rights, if that's not too tall an order.

Your comments, Ms. Lewis?

Ms. LEWIS. I was a corporate lawyer in a former life, so perhaps I'm more sympathetic. But I was on the New York City Bar delegation that went to China and met with the Beijing Lawyers Association and the Shanghai Lawyers Association, and met with a bunch of foreign lawyers there. I mean, the hard thing is that for the individual foreign lawyers, they have clients and they do have a duty as a lawyer to do what is best for their clients. They're not there as human rights advocates, so they're very constrained in what they can do.

Senator BROWN. Of course. I understand that.

Ms. LEWIS. Because they know immediately—and we say this again and again—they cannot even do real pro bono work like they would do in the United States. So they do things like give money to—

Senator BROWN. Well, all that, if I could be so bold, is part of the corruption of this whole trade policy, this whole system, is you can't expect anybody representing their businesses to ever do the right thing for human rights because they've got to take care of their businesses here. I understand all that. Of course, that's their fiduciary responsibility. But they are also human beings, they are also American citizens with a set of values. I would hope that might call on them to do something better.

Ms. LEWIS. Yes. But I think we're going to need to get it out of the city bar or out of the bar associations, not out of the individual law firms, because no one is going to be the first mover. I do think there is movement to use the bar associations, maybe like the

American Chamber of Commerce which has a group of lawyers. We need to try to have it so it doesn't have the label of "this individual law firm has taken this stand," but rather try to defuse it a little bit. I think that's going to be the movement, not getting a name list of necessarily individual firms.

Senator BROWN. Okay.

Ms. WICKERI. Just to build off of that—one result of the trip that Professor Lewis and I were both on to Beijing and Shanghai is that the New York City Bar Association now has a memorandum of agreement with the Beijing Lawyers Association to cooperate on a number of issues, including human rights. So this might be one way for American lawyers who are members of the New York City Bar in Beijing to coordinate efforts and work on these issues as opposed to highlighting the role of their firms.

Ms. COOK. In terms of examples—and this is maybe more from the sphere of the Internet world—I would just add that it's worth keeping in mind the significant power of efforts that involve the Chinese authorities hearing voices of concern from populations that they're not used to hearing from. In 2009, there was the example of the Green Dam software that the Chinese Government had contracted a company to institute.

All of a sudden, they came out with a regulation that every PC that was going to be imported to China had to have this particular software that was supposedly to protect children from pornography, but actual tests found that it was really targeted at censoring and very much filtering and monitoring information, including on issues like human rights groups, minorities, and Falun Gong practitioners.

What happened was that there was a real outcry from the Chamber of Commerce and I think there were also complaints from some legal associations or business associations. These were combined with the voice of netizens and some of the human rights lawyers that we've been talking about today. It was really quite a powerful force because I think it took the Chinese Government off-guard a bit and they backed off.

Now, they've still implemented this particular software in schools, but they really backed away from the big, nationwide policy. So when you really have a multilateral front of opposition, particularly when people are talking about their concerns from an economic and commercial perspective, then this can be effective. The issues relating to broader challenges to the rule of law in China do not only affect Chinese citizens, they affect a lot of American companies. That may be one effective angle for approaching the issue and getting business or legal firms to speak out against mistreatment of human rights lawyers. Certainly in the case of the Internet and the Green Dam software, there was a strong sense that it was going to damage business for people who were trying to import technology into China, which is what sparked the outcry.

Senator MERKLEY [presiding]. Nisha is going to have to leave in a few minutes. Did you want to share some additional thoughts?

Ms. BISWAL. I did. I wanted, first of all, to just thank you. This is my first opportunity as a new Commissioner to be able to participate. So my primary objective in coming today was to learn, to observe, and to just state my desire and willingness, on behalf of

USAID, to be part of the conversation. But this is a really interesting and important conversation that's happening right now.

I do apologize for having to leave early, but I would like to just pursue that conversation, perhaps, a little bit later because very key questions that you're raising in terms of how we influence the rule of law and legal reforms and whether or not we're having any impact with some of the things that we are trying.

And I think it's probably a little bit early to assess what kind of impact we're having and whether it's sufficient to continue, but I think it's a good conversation to be having and to be constantly looking at the ways that we're approaching this, and what kind of effect it's having.

I do think that there is a connection between economic governance, commercial law, and strengthening rule of law at large, and I think it may not be as direct and as quick and immediate as we would want, but there is a connection there and we have to explore that a little bit as well. But again, I just wanted to thank you, and hopefully invite a conversation in the near future to continue the dialogue that has started here.

Senator MERKLEY. Thank you very much for joining us and for your offer of a continuing dialogue in the future.

I wanted to go back to the number of folks who have disappeared over the last few months. It was about two months ago that Senate Majority Leader Reid led a bipartisan delegation of Senators to China, the largest delegation, to our knowledge, that's ever gone to China, 10 Senators, bipartisan. We were arriving there, really in the midst of this situation with so many folks disappearing. Sarah, I'm not sure if you covered this before I arrived or someone else did, so if you did I apologize.

But could one of you that has a good grip on this kind of summarize what we know about the numbers who have disappeared, whether it's home detention, whether they've truly disappeared, as in their families and friends do not know where they are, the patterns in terms of, are they mostly lawyer advocates, are they mostly folks who made unfavorable statements in their Twitter or email accounts, and so forth. Just give us a quick summary of what that picture looks like.

Ms. COOK. I think Ms. Li had the most comprehensive summary.

Senator MERKLEY. Ms. Li, I'm sorry I missed that. Can you just give us the outlines of that again?

Ms. LI. Well, you can supplement if I miss anything. The disappearance seems to be a tactic applied to those who are somewhat known internationally. That's number one. Number two, this tactic seems applied to those who are somewhat known as being stubborn, who would not bend. The number we have been able to verify is 30-some individuals who have been disappeared—and some of them have resurfaced later.

In that category, there are about half lawyers, half of them activists. Almost all of them have somehow been tied by authorities to the "Jasmine Revolution." Either they Tweeted, blogged, or talked at meetings, which were recorded, filmed, or they used the Chinese equivalent of Twitter to spread the word about the call for protests. The three largest geographic concentrations of people being dis-

appeared and being criminally detained are in Guangzhou, Chengdu, and Beijing.

On all three locations, there were some meetings right before the so-called “Jasmine Revolution” protests and large numbers of people who attended those meetings, which could be a dinner, were affected. In two cases, I think, they were gathering for dinner to discuss other topics. But during the meetings, somehow they talked about the anonymous online protests and their conversations were either secretly filmed somehow or recorded. Then there are others who were picked up by tracing their Tweets or blogs.

It’s also interesting to note that these affected individuals are in most cases well-known activists. Not as well-known as Ai Weiwei, but known in the Chinese activist community. What is interesting is that they include people who are petitioners, which means they may not have been political dissidents. They simply wanted to use the occasion to voice their own grievances—over unfair handling of their land, housing, jobs—and then there are quite a few numbers of young professionals, IT people who are very good on the Internet. Then, of course, we already know that they included those very brave human rights lawyers.

Senator MERKLEY. So these profiles that you’re mentioning, that’s of the 30 who have disappeared?

Ms. LI. Yes. In some cases, the line between disappearance and criminal detention is blurred because some reappeared later or were accounted for as having been criminally detained.

Senator MERKLEY. Now, we have several hundred during that same time period who were put under house arrest, I believe.

Ms. LI. Yes.

Senator MERKLEY. Were the profiles roughly similar, but just kind of a lesser level?

Ms. LI. It’s very hard to document because all of those who have been released were warned sternly not to speak up, otherwise facing severe consequences—before they were sent home. They were told to stay quiet. Some of them are now being released on bail, waiting for trial, so they are under restrictions from speaking about their treatment in detention. Yes, the numbers of the affected in the crackdown, including those who were soft-detained at home or questioned, should be several hundred at least. In a lot of the cases, the families might be afraid to speak up due to fear of retaliation.

In one case, I want to mention the case of one human rights lawyer who was disappeared for about three weeks and then sent home. He was at the time of release very sick and clearly had been severely tortured. He and his family were told not to speak a word about his situation, otherwise the consequences could be very grave. Today, even by now, after a few months, the person remains in critical condition. Attempts by activists to contact him to deliver aid or medicine have all been turned back because the police are standing guard at his apartment.

Senator MERKLEY. Has the U.S. Government formally inquired on behalf of the 30 or so disappeared, if you will?

Ms. LI. I believe both the U.S. Embassy in China, and visiting U.S. officials, prior and after the human rights dialogue in Beijing, have made statements calling for the Chinese Government to give

an account of those disappeared or detained individuals. We have also repeatedly submitted various lists of those individuals. What happened, we all know during the human rights dialogue in Beijing, Chinese officials first seriously warned against the U.S. delegates not to mention individual cases, but when they did, the Chinese officials at the dialogue actually came well-prepared with documents of each and every individual mentioned. For example, when Gao Zhisheng was mentioned, they said Gao is free and on a business trip. When Chen Guangcheng's case was mentioned, they said Chen was free at home. When Ai Weiwei was mentioned, of course he was said to be "investigated for economic crimes." The same for Liu Xia, the wife of Liu Xiaobo: she was said to be free at home, and anyone could visit her at anytime. This preparedness says that Chinese authorities do mind very much about the outside world knowing about these individuals and putting pressure on their release.

Senator MERKLEY. So largely here in the United States, much of the portrayal of this was kind of a warning shot, if you will, of the government to the Chinese citizens in regard to not follow the example of the Arab Spring. Is that your sense of the motivation of this crackdown on individuals?

Ms. LI. Oh, yes.

Senator MERKLEY. Yes. Yes. Yes.

Ms. LI. That is clearly the political agenda, which is to flick out any kind of spark for popular protests.

Ms. COOK. If I may, I think of it in the context of something that has been building for a while and in the context of growing resources being devoted to this issue of stability maintenance. The creation and expansion of an extralegal network of stability maintenance offices, running through Party committees down the Party hierarchy, combined with a situation where a lot of these individuals have already been detained and warned over their activism, creates a situation in which I could see the Chinese authorities using the "Jasmine Revolution" calls as an excuse, or maybe a catalyst.

Maybe this was an opportunity for some of the hardliners, people like Zhou Yongkang, to grab onto these calls and say, look, we really need to nip this in the bud. More generally speaking though, a lot of these people have been on the Party's radar for a while.

The other thing I would mention is the general practice of Chinese security agencies engaging in disappearances, abductions, and taking people from their homes without warrants. These cases are much more difficult to verify, but when you talk to Chinese refugees or read interviews with petitioners, or Falun Gong practitioners, or Uyghurs and Tibetans, these people who are much more anonymous than the activists we are talking about today and often aren't high-profile individuals, you find that these are pretty routine practices. People get picked up and taken to hotels, taken to schools, taken to so-called legal education centers all the time.

One thing I know that Freedom House would like to be able to do more of is to try to document more such cases. It is very difficult, given the dangers and given the anonymous quality of sources and how hard it is to know who these people are. But, as

I look at the current situation, that's also the lens and broader context through which it is important to place higher profile cases.

It may be that if the Arab Spring protests hadn't happened, then maybe there wouldn't have been a crackdown of this severity or within such a concentrated period of time. But it's something that's been building for a while.

Ms. LEWIS. I just want to completely agree that I think the Arab Spring exacerbated the sensitivity. But the sensitivity was there already. One of the concerns for those of us who are more in the academic community is that previously the government would follow the letter of the law, and the law often had exceptions which allowed them to say we're following the law, but according to article whatever we can extend the detention because of X, Y, or Z.

But like with Ai Weiwei, we were following the time that he was in detention before being formally arrested, and there's some key terminology because the actual physically taking into custody is different than the formal arrest under Chinese law. The time was going and going. We're like, oh, well, they still have one more week under the Criminal Procedure Law. Then it went past even what the Criminal Procedure Law would allow. They're just flouting the law now. So that was a change, too, of not even trying to wrap it up in the trappings of "it fits our formal law," which is particularly concerning.

When I was in Beijing last month when Ai Weiwei was still detained and we asked some very high-level criminal procedure scholars about the case, their response—and I think this was totally true—was, "We don't know about this case. You keep asking. It's not like we're hiding the ball, we just are not hearing about it." This is talking about how the information is not getting out.

Then the next response is, and why do you keep focusing on this handful of cases? What about the thousands of other cases? There was also, I think in some of the community there, just this: "You foreigners are focusing on this small number, what about the masses of cases. That's what we're concerned about." So I think it's hard at times to get traction among some of the more high-profile people who we would hope would help out.

Senator MERKLEY. So one of the things I'd like to get a better feeling about is really related to protests throughout China. You hear that there are a lot of labor protests, essentially folks who have lost their guarantee of a job, their guarantee of healthcare, maybe even their access to public schools. Then you hear about protests where land is being taken away from folks under the local official's argument that, well, all the land belongs to the state, and then the officials take and re-sell it to developers and people are displaced. So you hear about that section of protests, if you will.

So on this China trip I was asking questions a little bit about, what do you see in terms of broader grassroots reaction to the human rights side. Their answer was, well, not so much. Not so much because people don't know about it, they don't have access to the information, and maybe not so much because they're occupied with trying to get through their life.

One of the things that I raised was, well, here we're seeing these cities with these massive numbers of new housing towers. There was a little bit of a description by some American officials saying,



well, partly that goes hand-in-hand with the village policies where there's less guaranteed employment, less guaranteed healthcare, less guaranteed public schools, and so folks are shifting to the cities. So I was asking, is there a massive reaction to this, kind of people being economically forced to go into the city?

The general reaction—I'm sharing this because I want to get your perspectives—is well, not so much. Many of the young folks who are moving to the cities, they have fully embraced this dream of being able to dress the way they would like, being able to buy their condominium or their apartment in the city, and having a motorcycle or a car. That isn't particularly driving a huge reaction. So as we think about the economic labor issues and the corruption issues, is there any form of broader reaction on the human rights side or is it really the lack of information and the set of other issues folks have to deal with, weighing in?

Ms. COOK. As Ms. Lewis had mentioned, it is very difficult to gauge this. One thing I found in speaking to Chinese people, and the ones who have become activists, especially, a lot of them didn't start off as activists or petitioners. A lot of them started off as people similar to the ones you have just described, but at some point, for some reason beyond their control, they ran into the system.

When they ran into the system, they had faith in the law and in the system, in a lot of cases, this was partly because of the government's own rhetoric about rights and a growing rights consciousness in Chinese society. So, they went to petition or they tried to find some way of dealing with the injustice that they encountered within the system, and then they ran into more problems. Now for some people, when they encounter that first level of threat, they may just back off. But then you also have people who will continue to seek justice, and they continue in this lifestyle that just gets harder and harder because they run into more and more oppression.

When you have a system that is this corrupt and when there are this many human rights violations and abuses of power occurring, there are so many people each day running up against this system. One question the Communist Party faces is: how do you keep a lid on these things and prevent people from being informed of the extent to which this is happening and other people are encountering similar injustices?

A lot of Chinese have some sense that there are injustices occurring, and in a lot of ways the Internet has opened up room for more conversations related to certain issues. But in terms of the systemic problems, a lot of people don't realize the root obstacles until they run up against them.

I think that it is almost like a game that Communist Party leaders are playing in terms of how long they can keep a lid on it. Of course, in such a complex country, you have people with many different experiences. But there is certainly a phenomenon of people running into the system and then that generating more activism. And that goes hand-in-hand with one of the other things that I've observed in recent years—the sheer rights consciousness of Chinese people. They are more aware of the fact that they might have rights. When they speak of rights, it may not necessarily always

be in terms of systemic change and democracy, but rather based on a more instinctive sense of having rights and wanting justice.

Ms. LEWIS. And I think beyond sort of the individual injustices, where people are petitioning and trying to get help with grievances, that we are seeing very high-profile cases that are galvanizing larger groups. For example, the case of Zhao Zuohai. He is a man who was convicted of murder. A headless body was literally found at the bottom of a well. Zhao Zuohai had had a quarrel with someone who had since disappeared, so they said, well, this must be the body of the man you quarreled with, you did it. He was sentenced to death. That was commuted into a long prison sentence. Ten years later, whoa, the dead body, back alive—the man who was supposedly the victim was alive.

So if you want the clearest case, you don't need DNA evidence to say this was a wrongful conviction. There was no murder victim, this person was there. That case got on the Internet, it went viral, and then finally after it went viral through informal news channels the official press had to respond to it.

That case was seen as one of the pushes to get these new evidence rules out that had been circulating behind the scenes. There have also been deaths during detention. We have seen this a number of times; police coming out with excuses, like this person died because they were playing a game like Blind Man's Bluff. They don't even pass the laugh test. So we are seeing some of those cases, I think, getting some more attention from the wider populace.

Senator MERKLEY. I apologize, I'm being told my time has run out. Is staff going to chair, going to take over the emceeing? I really appreciate all the insights that you're bringing to this Commission. Thank you.

Mr. LIU [presiding]. My name is Lawrence Liu. I'm the Acting Staff Director for the Cochairman for the Congressional-Executive Commission on China. I wanted to give, in the remaining few minutes, the audience a chance to ask a couple of questions. I will just ask, we have two mics in the back. If you would just raise your hand if you have a question that you want to ask of the panelists, and please, since we're running low on time, keep your question brief and just ask the question. No statements, please. So, does anybody have a question? Just raise your hand, please.

Ms. FORD. I can speak from here, if that's okay.

Mr. LIU. Sure. Just be aware, there will be a transcript of these proceedings. So if you want to you can state your name and affiliation, but you're free not to as well.

Ms. FORD. Sure. My name is Caylan Ford. I volunteer with the Falun Dafa Information Center. My question is for Ms. Lewis. I wanted to inquire about what your impression is of what the impact is of a few of the recent campaigns that have occurred, particularly since 2006. I'm thinking of, in 2006, Luo Gan headed a campaign, the "Socialist Rule of Law Concept," which basically stipulated that the interests of the Party come above this sort of strict following of the letter of the law.

This was sort of further enshrined in December 2007 when Hu Jintao introduced the "Three Supremes," which was sort of enforced with alacrity by Wang Shengjun, who is now the president

of the Supreme People's Court. Again, these things sort of codify this notion that the Communist Party's interests are the guiding interests in implementing the law. What does this mean when we're looking at rule of law reform? I suppose Ms. Li may also want to weigh in on this.

Ms. LEWIS. And the "Three Supremes," which put the interests of the Party, and then you're supposed to look at sort of the public opinion, and then the law. The Constitution is the least supreme of the "Three Supremes." Certainly since the leaving of Xiao Yang, the former president of the Supreme People's Court, and Wang Shengjun coming in, who doesn't have formal legal training, this has shown a shift away from an emphasis on professionalism of the judiciary.

Also, Ms. Cook mentioned the role of Zhou Yongkang, who came out of the Ministry of Public Security and is now on the Politburo Standing Committee, and supports very harsh law-and-order tactics. He is very high ranking. In this sort of trifecta of the Public Security Bureau, the Procuratorate, and the courts, I think it is clear that the courts are the weakest of that threesome. That's not new but that's become clearer.

What has also been getting a lot of attention from, I think, the legal academic community has been the emphasis on mediation and avoiding use of the courts for what we think courts do: litigation. You should try to nip any problems in the bud. I remember going to a small community center in Xiamen in December, and they were so excited that they were a "*wu susong she qu*," literally a community without any litigation. This was something that was so great, that every dispute didn't have to go to courts. So I do think on the outside of even criminal justice, that there is a real emphasis on trying to just clamp down on any problems when they're small, nip them in the bud, and if it's gotten to court, that means it's blossomed into a big problem.

That being said, I work with a lot of people more on the law professor side than on the activist side, because that's the world I exist in. There are a lot of really good, sincere people who want to make the system better. So again, I think in the short term I'm pretty pessimistic for the climate. But in the long term I think there are some really sincere reform-minded people, and we're going to have to think not 1 year out, but 10 years out or more.

Ms. LI. Remember, in Chinese, the words "*fa zhi*," can be translated into "rule of law" or "rule by law." The Chinese Government always understood it as "rule by law." Many well-wishers wishfully read it to mean "rule of law." Number two, the Chinese Constitution, even though Article 35 claims to protect such human rights as freedom of expression and so on, the cardinal principles of the Constitution are to put the CCP's—the Chinese Communist Party—rule on top of everything else. Third, at every level of the judicial system there are "political and judicial committees" [*zheng fa wei*]. So these committees make decisions on verdicts for the courts, particularly on sensitive cases; in these cases, the trials, all the other procedures, are just a farce. Remember the spokeswoman for the Chinese Ministry of Foreign Affairs recently told journalists, "No law can protect those who make trouble." It might be just an illusion for us here to think China has had a rule of law reform

going on. Very recently, some Chinese lawyers, legal scholars, including very prominent people, have on different occasions said that the rule of law reform is dead.

Mr. LIU. Okay. Thank you.

I just want to let you know, because we weren't able to get to general questions until the very end, I'll extend this for another 10 minutes for a couple more questions. If you could please just keep them a little bit briefer.

I wanted to give Wei Jingsheng an opportunity to ask a question first, and then we'll let others ask them.

Mr. WEI. I just want to remind the CECC today of one very important subject which is about the Chinese human rights situation's association with American policy. We all know the Chinese human rights situation is terrible, but one of the worst parts is Chinese workers' rights to strike for unionization is almost completely non-existent.

This has resulted in extremely cheap labor in China in which they produce extremely cheap products which get dumped into the United States, and thus produces the result of unemployed workers in America. In this process I am afraid that American businesses have played a role to help the Chinese Government to exploit Chinese workers. The reason is very simple, because they get a huge profit from the cheap labor and they share this huge profit with the Chinese Government.

Since the time of PNTR 10 years ago, I am afraid that this trade deficit with China has been getting worse and worse every year. I am seeing that the bad Chinese human rights situation is closely tied to the Americans' daily lives.

CECC was established due to this reason, so, therefore I think this Commission has reason to correct such a mistake.

Thank you.

Mr. LIU. Thank you. That was very nice of you.

Yes. Do we have questions? Okay. Go ahead and speak into the mic. If you want to introduce yourself, please feel free to do so.

Ms. JIA. [Question asked in Chinese.]

TRANSLATOR. I will try to translate for her.

Mr. LIU. And if you could try to get to your question.

TRANSLATOR. My name is Jia Jianying. I am the wife of He Depu. My husband spent eight years in prison. He was released in January this year.

On the day that my husband was released in January, even right on that time, several police beat him up in front of me. I was there to pick him up. I cried and I shouted and tried to prevent them, and tried to help my husband. It was in vain. I just wanted to mention this to let you pay more attention to the torture and the situation of the human rights in China.

People are forbidden to speak out, even when they are tortured or beaten up. Not only the lawyers, but also the normal people, the victims, and the victims' family.

Mr. LIU. Thank you. I just want to make sure that we have enough time for the last remaining questions. But we thank you very much for your comments and appreciate it.

Does anybody else have any questions?

Mr. FEI. Hello. My name is Yong Fei, and I'm from Laogai Research Foundation. My question is, right now, one, actually Chinese students try to study abroad, like in the United States or in the United Kingdom. I wonder, is that possible for those students to take an active role in the future and what are the potential challenges for those young teenagers in China to deal with the human rights issue back in China?

Ms. WICKERL. That's a great question. In fact, I think that this echoes what Dr. Li was saying earlier about change, real systemic change having to come from inside of China. So there's certainly a role for students to play. But I want to emphasize, I don't think that students have to study abroad in order to play an active role.

I have been really impressed by a number of very young activists and public interest workers in China, some of whom have studied abroad but many of whom have not who have taken a real interest in developing and working in the public interest world inside China. So, I think that is a really positive note.

Ms. COOK. I would just say, from the perspective of information flows, that it is a really special opportunity, I think, for students to be able to travel outside of China. They can learn about certain perspectives and access information they might not be able to encounter in China. I have quite a few Chinese friends who talk about a definitive experience of sitting in class and having the professor mention what happened in 1989, or watching video footage of the tanks and students, and how that really changed how they thought about China, how they thought about their own country, its history, and their role. So, I would say that could be one thing to try to do—to keep an open mind and seek out alternative perspectives.

The other thing would be to learn about some of the different ways in which, when students go back to China, they can continue to access information abroad and remain safe online, too. In addition to just accessing information, if they want to continue reading certain information or communicating with people outside of China, particularly on human rights issues, they should be aware of some of the measures that they can take to remain safe. And they can even share those ways with their friends.

Ms. LEWIS. And particularly with respect to law students, which there are thousands and thousands now in China, I think that there's been a move to start having more clinical legal education. It's difficult to do, but having students feel that they can be empowered to help people, even with very simple disputes, or that it's not just about memorizing laws for the bar exam, but that you can actually have a positive impact in someone's life. If you learn that as a student, I think you carry that throughout your career. The reality, though, too, is that when you get out of school you need to find a job, as I'm sure many people understand in this room. So we can say, go be a human rights defender, but you also need to support yourself and oftentimes family members in China.

I've been happy to see some foreign funding even going toward helping young public interest lawyers have a couple-year fellowship because, as much as we can say you should do this kind of work, we also need to make it so people then can go home and have a house, and have food, and have the basic needs, which you just are

not going to be able to do on your ideals alone. I think that more funding for those kinds of programs is also a way to make people believe they can make positive change and do this as their career, not just once in a while.

Mr. LIU. Thank you.

We have time for one very brief question. So if you could please keep your question short. Go ahead.

AUDIENCE PARTICIPANT. So when it comes to environmental policy, there's a serious enforcement gap between the local and central governments. Local governments, even if they're told by the central government to clean up or have stricter enforcement of certain environmental regulations, often flout these and ignore them because of business interests local officials may have.

So environmental advocacy groups often try to protest these things, but then they get silenced. But as Chinese environmental problems get worse, do you think the central government will take a greater interest in listening to environmental advocacy groups or will they continue to silence them?

Ms. WICKERI. One thing I would say is that certainly as with any issues like environmental concerns that don't recognize local provincial boundaries and that have a tendency to spread, authorities will have no choice but to pay attention to these problems at some point. But environmental issues used to fall into this category of a "safe" area to work on as a public interest advocate or a human rights defender. We've seen in the past couple of years that that's just less and less the case.

A number of colleagues and I have noticed that this line between what is a "safe" issue to work on and what is a "sensitive" issue to work on has become more and more blurred. We can't, anymore, say that health and the environment are those areas where, as a human rights advocate or a public interest worker, you can work on and be assured that you won't be visited by local public security officers. That perhaps used to be the case, or maybe we weren't just seeing the signs.

So it is not necessarily the case that there are areas of human rights work that people can carve out and "safely" work on. I think what that means is that we have to be concerned with a comprehensive area of public interest work and human rights in China.

Mr. LIU. Okay. Well, thank you very much.

On behalf of Senator Brown, I wanted to thank everyone for coming to today's roundtable. I especially want to thank our witnesses for today. They gave some great testimony. I know Senator Brown was very sorry that he couldn't stay longer and he will be looking forward to the transcript from this roundtable.

Thanks again. This roundtable is adjourned.

[Whereupon, at 3:41 p.m. the roundtable was adjourned.]

## **A P P E N D I X**

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## PREPARED STATEMENTS

## PREPARED STATEMENT OF ELISABETH WICKERI

JUNE 23, 2011

Mr. Chairman and members of the Commission, I am grateful for the opportunity to participate in today's roundtable, and for your leadership on the important topic of the situation of rights defenders in China today. I would like to thank you, your fellow commissioners, and the CECC staff for inviting me.

I am here today representing the Leitner Center for International Law and Justice at Fordham Law School, and specifically the Committee to Support Chinese Lawyers, an independent NGO based at the Center. The Committee is a group of independent lawyers from outside China whose mission is to support lawyers in China in their quest to uphold the rule of law there. The Committee seeks to strengthen the role of lawyers in China and to promote their independence through public education, research, advocacy, and trainings.

Today's roundtable is extremely timely and important because current conditions for rights defenders and human rights lawyers in China are in flux. Since February 2011, following online calls for a "Jasmine Revolution," rights defenders and lawyers have been increasingly detained, disappeared, abused, and subjected to a range of strict methods of surveillance and control, even after release. In my comments today, I would like in particular to highlight the especially pronounced chilling effect this suppression has caused. I will suggest that the individuals that have been most seriously impacted are still in need of public calls for support and attention to their cases, by government and other actors.

Concern for rights defenders and human rights lawyers in China is not something we come to anew today. On many occasions over the past several years, NGOs, professional associations, activists, and academics have had cause to voice their concerns about the difficult position for these actors in China. For example in the run-up to the Beijing Olympic Games, during important visits to Beijing by visiting dignitaries, on sensitive historical dates such as June Fourth, and even in the wake of the announcement that Liu Xiaobo would receive the Nobel Peace Prize, activists would be confined their homes, brought in for questioning, and barred from leaving the country, but these conditions were generally loosened following the completion of the "sensitive moment." Seasoned rights defenders and human rights lawyers, used to these modes of harassment, would generally return to their work upon release.

However, since February of this year, the situation has deteriorated significantly, in particular for human rights lawyers who have, among other things, taken on the most unpopular criminal defense cases.

The deterioration represents a marked shift in at least two ways. First, the breadth of the crackdown that lead to the detention and disappearance of so many individuals—at least thirty detentions, that many disappearances, and many more put under surveillance, in just a month—is much wider. Second, in the wake of the eventual releases of these individuals there is an eerie silence among lawyers and other defenders who would previously have remained vocal and outspoken in carrying out work that was admittedly unpopular with authorities. Even casual meetings over lunch or coffee have become difficult to arrange, because of the fear of associating with others working in this field, especially, of course, with foreigners. The result of these two differences has been a substantial chilling effect and a decrease in the space and people willing and available to carry out human rights and legal advocacy in China.

The fact that lawyers and rights defenders have come out of detention less willing to return to work tells us something about their experiences before, during, and after detention. Many lawyers were simply disappeared as opposed to being formally detained; reports emerged about serious mistreatment, abuse, and torture while they were held; on release, people have had to sign statements admitting guilt or promising to behave. In the aftermath of their detention, they and family members have lived under very strict conditions, ranging from constant surveillance, to family members being arrested with their activist partners, to young children not being permitted to leave home to attend school.

As troubling as these stories are, it is the silence among formerly outspoken and energetic lawyers that is especially troubling to me and suggests that, in the immediate aftermath of this crackdown, legal advocacy and human rights work in China is stalled. It has become more difficult to find lawyers in sensitive cases, for exam-



ple, in cases where lawyers themselves are accused of a crime. Shanghai-based lawyer Li Tiantian, who was disappeared on February 19 and reappeared on May 24, is one of the few individuals to speak out about her experience. On Twitter, she noted “the kind of fear that you can describe is small, while the kind of fear you can’t speak of is the greatest.”

Lawyers are important not because they are lawyers per se, but rather, because lawyers have a multiplier effect with respect to human rights promotion and protection: they play a fundamental role within the system, protecting the rights of other civic actors, vulnerable citizens, and activists. Their special role, however, also makes them the target of abuse. Well before February this year, human rights lawyers in China faced serious challenges to fulfilling their professional responsibilities through legal and procedural obstacles, intimidation and abuse, and extra-legal attacks. This treatment of lawyers gives us a vital window onto what is happening in China today.

The significance of the fear the Li Tiantian speaks of cannot be understated. The role of human rights lawyers does not rest only on whether their cases are successful. Indeed, successes may be few and far between. The importance, rather, is based on the possibility of their success when they are able to try.

What policy implications emerge from this? I have four preliminary thoughts:

- First, more voices—including those at the government level—are needed to call attention to the many individuals that have been targeted in this crack-down. Through this attention, they may be supported and provided some space to return to work. This includes public calls and sustained, private dialogue with Chinese actors, official and unofficial.
- Second, international standards promoting the rights and freedoms of lawyers should be promoted and used to demonstrate how lawyers’ rights are being curtailed. Specifically, the UN Basic Principles on the Role of Lawyers, which members of the U.N. General Assembly, including China, adopted without dissent, are useful and can support standards already in the Chinese Lawyers Law which, in article 37, protects a lawyer’s “right of the person,” and affirms that a lawyer should not be held legally liable for the opinions he or she presents on behalf of a client.
- Third, expanding opportunities for the trainings and exchanges of Chinese lawyers with colleagues abroad remain important and provide space for much needed dialogue, but must also include Chinese lawyers doing rights defense and other public interest work.
- Fourth, as Professor Jerry Cohen, a member and Senior Advisor to the Committee to Support Chinese Lawyers, has increasingly emphasized, there is a need for foreign lawyers—many of whom benefit from doing business in China—to stand up and speak out for their Chinese colleagues. Bar Associations, including the International Bar Association and the New York City Bar Association have already done this. But our Committee believes that there is a professional responsibility for lawyers and law firms benefiting from their work in China to stand up and say something.

Finally I will end on what I hope are two positive notes. First, some well-connected lawyers and legal scholars, like Chen Youxi, have begun to express concern for their marginalized colleagues. These voices can only benefit from more support inside and outside China. And second, I was happy to read reports yesterday that artist Ai Weiwei had been released. Not a lawyer, but an advocate for change, it is worrying that he was detained for so long without information about his condition. However, perhaps this is a case that demonstrates how sustained media attention and public calls can have positive results.

Mr. Chairman, I’d like to thank you again for this opportunity to present a few thoughts. I am happy to answer any questions you or other commissioners may have.

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PREPARED STATEMENT BY XIAORONG LI

JUNE 23, 2011

The serious backsliding of the Chinese government’s human rights records had started before the 2008 Summer Olympics, highlighted with the jailing of activists Hu Jia, Huang Qi, and many others, the torture and disappearance of lawyer Gao Zhisheng, the imprisonment of Nobel Peace Prize laureate Liu Xiaobo and house arrest of his wife, both incommunicado, and the house arrest of Chen Guangcheng after his release. Yesterday’s release of the artist Ai Weiwei on bail awaiting for trial was in the same fashion as his arrest: with disregard of the Chinese law. All

these took place in the larger context of severe restrictions on freedom of expression and association, repression against religious and ethnic minorities, and significant roll-back on rule of law reform.

Since February, several hundreds of people have been harassed or persecuted in one of the harshest crackdowns in recent years when the Chinese government tried to stamp out any sparks for protests in the Tunisia-style “Jasmine Revolution” after online calls first appeared. According to information documented by the group Chinese Human Rights Defenders, the Chinese government has criminally detained a total of 49 individuals, outside the Tibet and Xinjiang regions. As of today, nine of them have been formally arrested, three sent to Re-education through Labor (RTL) camps, 32 have been released but most of them not free: out of which 22 have been released on bail to await trial, while four remain in criminal detention. In addition, one individual is being held in a psychiatric hospital, and one lawyer remains under residential surveillance in unknown locations. At least 26 individuals are confirmed as having been subjected to enforced disappearance, some for as long as 70 days. At least 10 of them remain unaccounted for as we speak. More than 200 people were put under “soft detention” at home, taken on “mandatory tour,” or questioned and intimidated by police. (An updated list of these individuals is appended at the end of this statement and can also be found at the CHRD website here: <http://chrnet.org/2011/06/17/jasmine—crackdown/>)

Giving the difficulties in collecting and verifying information, these numbers are far from being complete. There are unconfirmed reports that extremely nervous authorities at the top level approved a list of more than one thousand individuals in February as the targets of this nation-wide crackdown.

Many observers consider the current crackdown the worst since the post-Tiananmen man-hunt, arrests, and jail sentences after the June 4th massacre in 1989 outside Tibet and Xinjiang. The current crackdown is believed to have affected more people than the 1998–99 suppression against organizers of China Democracy Party, an opposition party, in which several dozens of people were eventually sent to jail to serve sentences up to 15-years or longer.

One distinction of this crackdown is that the government targets people beyond circles of political dissidents. The disappeared and harassed range from petitioners who try to lodge grievances against corrupt officials, to artists like Ai Weiwei, who use art to voice discontents of the powerless. This has been an all-out assault on civil society in the wake of rolling back on rule of law reform, especially as seen in authorities’ indiscriminating and ostentatious use of extra-judicial tactics.

I particularly want to draw your attention to the fact that the Chinese government extensively and ostentatiously used extra-judicial tactics such as enforced disappearance, secret detention, and torture in the current crackdown, in clear violation of the international Convention against Torture, which the Chinese government signed and ratified in 1988. According to the Chinese Human Rights Defenders (<http://chrnet.org/2011/06/07/u-s-must-voice-concerns-over-china%E2%80%99s-assault-on-human-rights-lawyers-during-the-upcoming-legal-experts-dialogue-with-china/>), the abuse included:

- beatings,
- use of electric batons on genitals,
- sleep and food deprivation,
- repeated and lengthy interrogations (on occasion for up to 20 hours at a time),
- forcible injections and ingestion of unknown substances,
- forced stress positions (such as sitting motionless on small stools for many hours at a time), and
- threats to their families.

Some individuals have also been coerced to sign statements in which they admitted “wrongdoing” and made various promises, such as to cease their activism.

The harassment is designed to strike fear, and often targeting families including children. Take for example the AIDS activist, environmentalist Hu Jia, who has served almost 4½ years in prison, is due for release in 3 days. His wife, Zeng Jinyan, is facing growing pressure from police in recent days. She fears that she and her 3-yr old daughter will be put under house arrest with her husband soon after his release. Releasing from prison followed by detention at home has become the fate of China’s well-known prisoners of conscience. The most horrific case is that of Chen Guangchen, who is blind. Mr. Chen was house-arrested with his wife and two young children after he was released from prison last year. Many efforts to visit them in their village, including attempts by CNN journalists and EU diplomats, have been blocked by security guards, often violently. And of course there is the case of lawyer Gao Zhisheng, who had disappeared after his release from prison where he was severely tortured.

What impact should this have on US policy toward China? The Chinese government has fought back to criticisms. It has threatened with economic sanctions of its own. That should be expected. But that is not the reason to give up public pressure and replace it with close-door “dialogues” and “strategic partnership.” Promoting human rights can be inconvenient. It may sometimes interfere with the economic and strategic interests of the US government. But a genuine commitment to such values as human rights means that there is to be no double standards applied on countries with different economic power status.

We see very little as to what, if any, concrete outcome is achieved through the US-China Human Rights Dialogue, the Economic Strategy Dialogue, and the Legal Expert Dialogue, though the Obama Administration has been unusually outspoken about China's rights abuses since its 2nd year. The “dialogues” seem to do more to appease critics of complacency than to secure real change; its’ a diversion from the fact that nothing of consequence is being accomplished, because the Chinese government knows there is nothing to fear from delivering no concrete results following year-after-year’s “dialogues.” The Chinese government even welcomes close-door dialogues because they remove the spotlight from exposing its human rights abuses. Chinese officials are quick to cite the existence or resumption of dialogue as sign of “progress” in human rights.

When the Chinese government clearly lacks any political willingness to curtail its violations, any “quiet diplomacy” and behind-door engagement must be coupled with public pressure. Dialogue and cooperation can be useful, but only when the partner government shows political willingness to improve its records. The US-China human rights dialogue, if it is to proceed, must be tied to concrete and publicly articulated benchmarks. These benchmarks should not be ignored when they prove inconvenient or getting in the way of U.S. economic and strategic interests.

Many have argued against publicly criticizing a rising economic power on human rights because, they contend, economic liberalization will lead to greater political freedoms. Enough time has passed for critically examining this position. 30 years’ economic development in China has not brought fundamental changes in human rights. An unaccountable government is more likely to be corrupt and irresponsible to their people’s most urgent needs. In China there have been rising numbers of protests, some 90,000 annually for the past few years by the government’s own count. The protests are fueled by growing discontent over corruption and arbitrariness of official policies. Moreover, the Chinese government has used its economic clout to strengthen its censorship, increasing police surveillance and political repression domestically, and internationally, boosting its lobbying efforts to undermine human rights standards and weaken their implementation. China tries to take any teeth out of the international human rights system that might one day be applied to its own shameful records. And it is aggressively replicating its “economic growth at the expenses of human rights” to other developing countries, in Southeast Asia, Africa and Latin America.

Consistent and substantive international pressure can make a real difference. By strongly exposing or condemning abuses, conditioning access to military cooperation or market, imposing targeted travel or banking sanctions on abusive high-rank individual officials, and calling for prosecution of those responsible, for example, the US government can increase the cost to the Chinese governments for harassing activists and lawyers. Credible and consequential pressure help create space for local activists to push their government to reform, and allow those persecuted by their government know they do not stand alone.

To borrow some suggestions I made during a meeting with President Obama, which I participated in January, I continue to argue that long-term U.S. efforts to promote human rights in China should aim to:

1. Support civil society, and in particular, support activists and lawyers who are taking great personal risks to promote human rights and democracy. The hope in China’s future lies with Chinese citizens. They are speaking up, organizing, and demanding that their rights be respected. For nearly a decade now, a civil rights movement known as the “rights defense movement” has spread among citizens of many kinds. Victims of forced eviction or migrant laborers are transformed into rights activists when they see their efforts to remedy injustices answered with censorship, police brutality, and corruption in legal institutions. Some practical ideas for supporting civil society include:

- (a) Make strong and clear public statements that support human rights activists and that speak directly to the Chinese people: Rhetoric is important. The Chinese authorities, in service of their own power interests, consistently imply that “we are China” and “China is us” and that is all. Yet the most significant and sensitive divide in China today is between the Chi-

nese state and its citizens. It is insensitive to lump rulers and ruled together as if they were the same thing and as if only the rulers can speak for the whole.

(b) Facilitate Internet freedom: Today the Internet is the most important tool, with which ordinary citizens can access information, express their views, organize themselves, and engage in activism. The US government should do what it can to provide Chinese Internet users with technical support to skirt the “Great Firewall” and hold American IT companies accountable for the sordid practice of supplying the Chinese government with technology that facilitates censorship and surveillance.

2. Focus on holding the Chinese government to its own rhetorical commitments to its citizens. Such an emphasis is effective in its own right and will also help to avoid stimulation of anti-Western “nationalist” sentiment. If the Chinese government is called upon to observe the constitutional and legal commitments that it has made to its own citizens—some of which are inscribed in international protocols—it can hardly claim “interference.”

3. Strengthen the US role in multilateral forums such as the UN Human Rights Council. The Chinese government participates actively in the UN Human Rights Council. The US should use the UN HRC more effectively, to press for Chinese government adherence to the international human-rights conventions and covenants that it has signed and/or ratified. Such a policy would require the US to take a leadership role in forums such as the UN HRC and to work there to build multilateral coalitions to hold the Chinese government accountable for its failure to respect international norms as well as to prevent it from attempting to change those norms. This kind of international scrutiny undercuts the Chinese government’s exceptionalist claims about “human rights views with Chinese characteristics” and leaves claims about “interference in internal affairs” vacuous. It also decreases the Chinese government’s ability to fan nationalist sentiment at home into opposition to “Western” human rights.

4. “Rule of law” assistance programs and exchange of “legal experts” should be made relevant to administrative and legal problems responsible for human rights abuses. The Communist Party elite in China welcomes Western legal assistance programs insofar as they strengthen a legal system that it, the Communist Party, can continue to dominate. Such assistance is seen as strengthening, not weakening, the one-Party rule. The Party’s “Political and Legal Committees” are tools the Party uses to control on the judiciary at every level, where they dictate legal procedures as well as verdicts. US assistance to “rule of law” programs is misconceived insofar as it assists the current legal system in being more efficient. Instead, US legal assistance would be better directed toward problems such as widespread torture. The Chinese government ratified the Convention against Torture in 1988. US legal aid could also be used to strengthen protections for criminal defense lawyers from prosecution or being barred from practicing law.

Appendix:

**Criminal detentions, disappearances, and individuals under residential surveillance outside of their homes as of June 23, 2011**

CHRD has documented a total of 49 individuals who the Chinese government has criminally detained since mid-February after anonymous calls for “Jasmine Revolution” protests first appeared online. At the time of writing, nine of these criminally detained have been formally arrested, three have been sent to Re-education through Labor (RTL) camps, 33 have been released (out of which 23 have been released on bail to await trial), and four remain in criminal detention.

In addition, one individual is known to be held in a psychiatric hospital. Three others had been placed initially under residential surveillance outside of their homes and are now believed to be home but under police monitoring with severely restricted contact and movement.

CHRD has also been able to verify that at least 26 individuals have been subjected to enforced disappearance during the crackdown, including some who have missing since it began. At least 10 activists are known to still be missing.

Information about nine individuals who have been formally arrested (one has been convicted of a crime and issued a prison sentence):

1. **Chen Wei (陈卫)**, 42, a rights activist based in Suining City, Sichuan Province, was formally arrested for “inciting subversion of state power” on March 28. Chen was criminally detained for “inciting subversion of state power” on February 20 after police in Suining called him for “tea” that same morning. Officers and security guards later searched his home, confiscating a computer, two hard drives and a USB drive. He is currently being held at the Suining City Detention Center. Chen was a 1989 Tiananmen student protester when he was studying at the Beijing Institute of Technology, majoring in mechanical engineering. He was imprisoned in Qincheng prison and released in January 1991. In May 1992, Chen was again arrested for commemorating June 4 and organizing a political party, and was sentenced to five years in prison. In the past several years, Chen has emerged as a leader in organizing human rights actions in Sichuan.
2. **Ding Mao (丁矛)**, a 45 year-old dissident, was seized from his home on February 19 and then criminally detained on the same day by police in Mianyang City, Sichuan Province, on suspicion of “inciting subversion of state power.” CHRD learned of his arrest on March 28; he is currently being held at the Mianyang City Detention Center. CHRD learned on April 9 that police in Mianyang City have blocked meetings between Ding and a lawyer hired for him by his family because, according to the police, Ding’s case “involves state secrets.” As a philosophy student at Lanzhou University in the late 1980s, Ding became a student leader during the 1989 pro-democracy protests. He was twice imprisoned for his activism, first in 1989 and again in 1992 when he was arrested for organizing the Social Democratic Party. He spent a total of 10 years in jail. Before his detention and arrest, he was the general manager of an investment company in Mianyang.
3. **Dong Jiqin (董继勤)**, husband of housing rights activist and human rights lawyer Ni Yulan, has been confirmed to have been formally arrested around the same time as his wife, Ni Yulan, mostly likely for “creating a disturbance.” Dong is being held in the Xicheng Detention Center in Beijing’s Haidian District. Dong and Ni disappeared on April 7, and family members only discovered their whereabouts on April 11 after contacting the police.
4. **Li Shuangde (李双德)**, a citizen lawyer and an activist based in Chengdu City, Sichuan Province, was sentenced on June 1 to four months in prison and fined 20,000 RMB for “credit card fraud” by the Jinjiang District Court in Chengdu City, Sichuan Province, and is the first activist arrested during the crackdown known to be convicted of a crime and sentenced to prison. Li was criminally detained on March 24 on suspicion of “credit card fraud” by the Public Security Bureau (PSB) of Jinjiang District and formally arrested for the same charge on April 2 after police had taken him away on March 21. His arrest and conviction came despite the fact that his family repaid the 20,000 RMB owed by Li to his bank by April 2. His sentence includes time already

served in detention and is due to expire on July 22. Li operates a legal aid center in Chengdu, and provides legal aid to citizens who cannot afford to hire a lawyer. Li has been harassed on numerous occasions in the past by local officials.

5. **Ni Yulan** (倪玉兰), a housing rights activist and former lawyer, has been formally arrested as of May 17. She was criminally detained in Beijing for “creating a disturbance,” according to a detention notice dated April 6, and no formal arrest notice has been issued to date. She is currently being held in the Xicheng Detention Center in Beijing’s Haidian District. Ni and her husband Dong Jiqin were seized by the police on April 7 and family members only discovered their whereabouts on April 11 after contacting police. This is the third occasion on which Ni has been detained for an extended period of time by Beijing police, and her family has raised serious concerns about her health. As the result of repeated episodes of torture over the past decade, Ni cannot walk and suffers from an assortment of chronic medical issues including difficulty breathing, heart problems, and digestive trouble.
6. **Ran Yunfei** (冉云飞), 46, a writer, blogger, and activist, was formally arrested on March 25 for “inciting subversion of state power” and is currently being held in the Duijiangyan Detention Center. Ran was originally criminally detained for “subversion of state power” on February 24, according to a formal detention notice received by his wife; it is not known why the charge was changed. Ran, a member of the ethnic Tu minority who studied Chinese literature at Sichuan University, is an employee of the magazine *Sichuan Literature* and a resident of Chengdu City, Sichuan Province. He is a prolific writer of social and political commentary. He blogs at <http://www.bullogger.com/blogs/ranyunfei/> and his Twitter account, @ranyunfei, has more than 44,000 followers. Ran has been in police detention since the morning of February 20, when he was summoned to “tea.” Officers later searched his home and confiscated his computer.
7. **Wang Lihong** (王荔虹), 55, a Beijing-based human rights defender and democracy activist, was criminally detained for “creating a disturbance” at some point before March 26, and was formally arrested on April 20. The charge against her was later changed from “creating a disturbance” to “assembling a crowd to disrupt social order.” The new charge is believed to be tied to Wang’s support for the “Fujian Three” netizens who were convicted of slander last year; and in particular to the large crowd of netizens who gathered outside of their sentencing on April 16, 2010, to show their support. On May 13, her lawyer Liu Xiaoyuan (刘晓原) applied for her release on bail to await trial, but this request was rejected. In 1989, Ms. Wang joined the pro-democracy demonstrations in Beijing, an experience which led her to resign from her government job in 1991. Ms. Wang, a former doctor, then became a dedicated democracy activist and human rights defender. She has worked on projects such as relief efforts for the “Tiananmen homeless” and advocated on behalf of three imprisoned Fujian netizens and citizens fighting land seizures in Beihai City, Guangxi Province.
8. **Xue Mingkai** (薛明凯), 21, has been formally arrested for “inciting subversion of state power.” Xue is currently being held at the Jining City Detention Center in Shandong; the date of his arrest is not known, as his parents have yet to receive a formal arrest notice. He was seized on February in Hangzhou City, Zhejiang Province, but his family never received any formal notification at that point, either. Xue’s father believes Xue was returned to Jining from Hangzhou around March 7 or 8. His mother, who repeatedly inquired at Jining government offices about her son’s whereabouts, was seized on April 20 outside of the Jining Letters and Visits Office and is currently missing. Xue served 18 months in prison between May 2009 and November 2010 for “subversion of state power.” A migrant worker living in Shenzhen at the time, Xue was charged with “subversion” after allegedly planning to organize a political party called the “China Democratic Workers’ Party” with online friends in the summer of 2006 and then contacting and joining an overseas democracy organization in early 2009.
9. **Zhu Yufu** (朱虞夫), 58, a Hangzhou City, Zhejiang Province-based democracy activist, was taken away by police on March 5. Officers also searched his home and confiscated two computers and other items. Zhu was criminally detained on suspicion of “inciting subversion of state power” and formally arrested on the same charge on April 11. Formerly a property manager at the Hangzhou City Shangcheng District Urban Housing Bureau, Zhu was convicted of “subversion of state power” in 1999 and served seven years in prison for founding the *Opposition Party* magazine, which carried articles about the China Democratic Party. After his release in 2006, he spoke out against the torture he suffered in prison and continued to promote democratization. He was detained again in 2007 after a confrontation with a police officer who was questioning his son, and sentenced to two years in prison for “beating police and hindering public duty.”

Information about three individuals who have been sent to Re-education through Labor (RTL) camps:

1. **Cheng Li (成力)** is a 57 year-old Beijing-based performance artist. He was taken into detention on March 23 after performing a piece entitled "Art Whore" during a performance art exhibition at the Beijing Museum of Contemporary Art on March 20. The theme of the show was "sensitive areas," and two other artists were also seized by police after the exhibition. Cheng was later criminally detained for "causing a disturbance" by officers from the Songzhuang police station in Beijing, and was then sent to one year of Re-education through Labor.
2. **Hua Chunhui (华春晖)**, 47, is a Wuxi City, Jiangsu Province-based netizen, activist, and mid-level manager at an insurance company. He was seized by police on February 21 and criminally detained on suspicion of "endangering state security," according to a notice issued by police at the Tanduqiao Station in Wuxi's Nanchang District. CHRD learned in mid-April that Hua has been sent to Re-education through Labor. Hua, using the Twitter account @wxhch64, tweeted messages about the "Jasmine Revolution." Hua and his fiancée Wang Yi (王译) have been active in civil society initiatives in recent years; for example, the couple organized a forum in Beijing in May 2010 to discuss the demonstrations outside of the Fuzhou City trial of three activists. Wang Yi (whose given name is Cheng Jianping) was sent to one year of Re-education through Labor in November 2010 for a tweet she posted during violent anti-Japan demonstrations in October 2010.
3. **Yang Qiuyu (杨秋雨)**, a Beijing-based dissident, was taken away on March 6. He was criminally detained on March 7 on suspicion of "creating a disturbance," and on March 9 police returned to search his home, confiscating a computer, name cards, and other items. Yang's wife received a notice from Beijing PSB Dongcheng Sub-division on April 14 that Yang has been sent to RTL for two years.

Information about 36 individuals who have been criminally detained (ten have been released, 22 have been released on bail to await trial and four remain in detention centers); those still in detention appear in bold:

1. **Cao Jinbai (曹劲柏)**, a netizen from Zaoyang City, Hubei Province, attended the February 20 "Jasmine gathering" at Beijing's Wangfujing Shopping Street and later wrote a post about his experience which he circulated via Skype. On February 24, police in Beijing detained Cao, searched his home, and confiscated his computer, cell phone, and other personal items. Cao was released on March 1, only to be detained again on March 7 for a few hours and again on March 15 for six days. Police told Cao that he was being "released on bail to await trial," but never informed him what charge he was accused of or presented him with any formal documentation regarding his repeated detentions.
2. **Cheng Wanyun (程婉芸)**, 41, is a Beijing-based netizen originally from Sichuan Province. She was summoned by Beijing police on February 26 and criminally detained for "creating a disturbance" and "obstructing public safety" the next day. Her computer was also confiscated. On March 28, Cheng was released on bail to await trial and will be subjected to one year of "public surveillance" (*guanzhi*). During her detention in Tongzhou District Detention Center, Cheng was interrogated seven times mainly about her writings on QQ groups about the revolutions in the Middle East, whether she has been "exploited by someone else" or been part of a wider network or organization.
3. **Feng Xixia (封西霞)**, a petitioner from Xi'an City, Shaanxi Province, was criminally detained in late February and tortured while in detention. Reportedly, Feng was handcuffed in an uncomfortable position and beaten while in police custody. Feng was seized in Beijing on February 27 and detained first in the Fengtai District Detention Center. She was transferred to the Beijing Number One Detention Center on March 3 and released on bail to await trial on March 25. The torture reportedly took place in the Fengtai District Detention Center. Police also searched the residence Feng had rented in Beijing, confiscating her computer and other items. Officials never provided Feng with any formal documentation regarding her detention.
4. **Gu Aisi (贾爱思)**, a Shanghai petitioner, was seized in Beijing on April 29. Gu had traveled to Beijing with more than 1000 fellow Shanghai petitioners to demonstrate outside the National Letters and Visits Bureau. Gu was returned to Shanghai and criminally detained before being released on May 7.
5. **Guo Gai (郭盖)**, is a Beijing-based artist. Guo was seized on April 24 after taking photos at a performance art exhibition at the Beijing Museum of Contemporary Art on March 20, where some of the pieces touched on the current crackdown. Guo, whose computer was confiscated, was later criminally detained but the precise charge is unknown. Guo was held in the Tiahu Detention Center in Beijing's Tongzhou District before being released on bail on April 24 to await trial.
6. **Guo Weidong (郭卫东)**, born in 1972, a college graduate, employee of a business corporation, and an active netizen from Haining City, Zhejiang Province, was criminally detained on March 11 for "inciting

subversion of state power.” The day before, police had arrived at Guo’s home and office and confiscated his computer along with other items. Guo, whose Twitter account is @daxa, had previously been summoned twice for questioning in relation to the anonymous online calls for “Jasmine Revolution” protests. Guo was released on bail on April 10 to await trial.

7. Guo Yigui (郭谊贵) is a Shanghai-based petitioner, together with fellow petitioners Tan Lanying and Yang Lamei (杨腊梅), Guo was seized on February 20 and held on suspicion of “assembling a crowd to disrupt the order of a public place.” Guo was released on February 25 while Tan and Yang were released on March 23. The three, all veteran petitioners, were separately taken into custody by police at a site in Shanghai identified in online postings calling for “Jasmine Revolution” protests, though there is no indication the three knew anything about the protests.
8. Huang Xiang (黄香), is a Beijing-based artist. Huang was seized together with artists Cheng Li and Zhui Hun after appearing in a performance art exhibition at the Beijing Museum of Contemporary Art on March 20, where some of the pieces touched on the current crackdown. Huang was later criminally detained for “causing a disturbance” by officers from the Songzhuang police station in Beijing. Huang was held in the Tiahu Detention Center in Beijing’s Tongzhou District before being released on bail on April 24 to await trial.
9. Kan Siyun (阚思云), a petitioner from Chengdu City, Sichuan Province, was seized on April 9 outside of the sentencing of Sichuan-based activist Liu Xianbin (刘贤斌). Together with two other petitioners, Li Renyu and Peng Tianhui, the three were originally returned to Chengdu City from Suining City and given seven days of administrative detention on March 28; however, instead of being released, they were then criminally detained by the Chengdu City PSB and transferred to the Chengdu City Detention Center. They were charged with “inciting subversion of state power” and released on April 24 on bail to await trial.
10. Lan Jingyuan (兰靖远), a Beijing-based victim of forced eviction who has been petitioning the government for compensation, was detained on February 24 on suspicion of taking part in an “illegal demonstration” after participating in the “Jasmine Revolution” protest in Wangfujing, Beijing, on February 20. Lan was released on bail on February 24 and now awaiting trial. Like others released on bail, he was warned not to speak about his case to anybody.
11. Li Hai (李海), 57, a Beijing-based dissident and activist, was criminally detained on February 26 by police in Chaoyang District for “creating a disturbance.” Li was released on bail on April 6 and now awaiting trial. He was a student leader at Beijing University during the 1989 pro-democracy demonstrations, and was expelled from school and detained for seven months after the demonstrations were suppressed. In 1995, Li was detained and eventually sentenced to nine years in prison for his pro-democracy activities and advocacy on behalf of victims of the Tiananmen Massacre. Following his release in 2004, Li continued his activism and has been repeatedly harassed, threatened, and detained by the government. His twitter account is @lihai54.
12. Li Renyu (李仁玉), a petitioner from Chengdu City, Sichuan Province, was seized on April 9 outside of the sentencing of Sichuan-based activist Liu Xianbin (刘贤斌). Together with two other petitioners, Peng Tianhui and Kan Siyun, the three were originally returned to Chengdu City from Suining City and given seven days of administrative detention on March 28; however, instead of being released, they were then criminally detained by the Chengdu City PSB and transferred to the Chengdu City Detention Center. They were charged with “inciting subversion of state power” and released on April 24 on bail to await trial.
13. Li Xiaocheng (李小成), 50, is a Beijing-based petitioner-activist originally from Henan Province. On February 20, Li went to Beijing’s Wangfujing, one of the locations identified in the call for “Jasmine Revolution” protests. Li was seized in Beijing on February 26 and detained in the Fangshan Detention Center, the Beijing Number One Detention Center, and later the Fangshan Detention Center again. On March 27, he was released on bail to await trial. Police never presented Li with any formal documentation which might explain his detention. Li is a veteran petitioner known as the “chief” of Beijing’s “Petitioners Village,” an area near Beijing South Train Station where petitioners congregate.
14. Li Yongsheng (李永生), 45, a Beijing-based rights activist, was criminally detained on March 7 for “creating a disturbance” by the Tongzhou District PSB. He was released on bail to await trial and returned home on April 6. Li has participated in a number of activities organized by NGOs in Beijing in recent years.
15. Liang Haiyi (梁海怡, aka Miaoxiao [渺小]), 42, a netizen originally from Guangdong Province, was taken in for questioning on February 19 by police in Harbin City, Heilongjiang Province, along with her ex-husband. Her ex-husband was later released, but Liang remained in police custody. According to Liang Xiaojun (梁小军), a lawyer retained by her family, Liang Haiyi was criminally detained on suspicion of “subversion of state power” on February 21. Police accused Liang Haiyi of “posting information from foreign websites



regarding ‘Jasmine Revolution’ actions on domestic websites” such as QQ, the popular Chinese social networking site. She is being held at the Harbin City No. 2 Detention Center.

16. Liu Guohui (刘国慧), 44, is a victim of forced eviction and petitioner from Linyi City, Shandong Province. Liu was seized on March 10 when she went to a meet with a policeman in Linyi City, who promised to discuss compensation issues regarding her demolished home. She was then criminally detained on March 11 on suspicion of “inciting subversion of state power.” Liu was released on bail to await trial and is now living at home under residential surveillance. It is believed that Liu’s detention might be related to her discussion online with another activist about the jasmine revolution.
17. Liu Huiping (刘慧萍), a petitioner from Guangxi Province, was criminally detained on suspicion of “inciting subversion of state power” after being forcibly returned to Nanning City, Guanxi, from Beijing on March 15. Liu was released on bail to await trial in early April. Liu is a leader of a group of female village activists who have been petitioning against gender discrimination against women who were married to other villages and consequently lost their right in the management of economic affairs of villages around Nanning.
18. Liu Zhengxing (刘正兴, aka Zhui Hun [追魂]), is a Beijing-based artist. Zhui was seized together with artists Cheng Li and Huang Xiang after appearing in a performance art exhibition at the Beijing Museum of Contemporary Art on March 20, where some of the pieces touched on the current crackdown. Zhui was later criminally detained for “causing a disturbance” by officers from the Songzhuang police station in Beijing. Liu was held in the Tiahu Detention Center in Beijing’s Tongzhou District before being released on April 24 to await trial.
19. Mo Jiangang (莫建刚), 60, a human rights and democracy activist, was seized sometime before March 6 and criminally detained. As of March 18, he had been released; however, more detailed information regarding his situation is not currently available. Mo, who was born in Guiyang City, Guizhou Province, moved to Beijing and became involved in the pro-democracy movement in 1978. He was briefly detained after taking part in the 1989 demonstrations in Beijing. After 1989, Mo returned to Guiyang and continued his activism, becoming a leader among local democracy activists.
20. Pan Zhenjuan (潘振娟), a petitioner from Guangxi Province. She has since been released. Details regarding her detention or release are currently unclear.
21. Peng Tianhui (彭天惠), a petitioner from Chengdu City, Sichuan Province, was seized on April 9 outside of the sentencing of Sichuan-based activist Liu Xianbin (刘贤斌). Together with two other petitioners, Li Renyu and Kan Siyun, the three were originally returned to Chengdu City from Suining City and given seven days of administrative detention on March 28; however, instead of being released, they were then criminally detained by the Chengdu City PSB and transferred to the Chengdu City Detention Center. They were charged with “inciting subversion of state power” and released on April 24 on bail to await trial.
22. **Quan Lianzhao (全连昭)**, 60, a petitioner from Guangxi Province, was seized by interceptors in Beijing on February 26 and forcibly returned to Nanning City, Guangxi Province, where she was criminally detained for “subversion of state power.” Quan is currently being held in the Nanning City No. 1 Detention Center. It is believed that Quan’s detention is related to her taking part in a “Revolutionary Singing Gathering” in a Beijing park on February 3, where petitioners gathered to sing revolutionary songs and present accounts of their grievances. Quan also gathered with a number of petitioners on February 20 to present their grievances at Beijing’s Chaoyang Park; while the gathering drew the attention of police because it was the same date as the proposed “Jasmine Revolution” protests, friends said that Quan does not use the internet and would have not known of the demonstrations called for that date. Quan has been petitioning for four years in response to the forced expropriation of land in her village.
23. **Sun Desheng (孙德胜)**, a young Guangzhou City, Guangdong Province resident, was criminally detained on suspicion of “inciting subversion of state power” some time before March 9. Reportedly, Sun’s detention stemmed from a friend’s dinner party, where Sun wrote anti-corruption and anti-dictatorship slogans and then posed with friends for a picture. The dinner, which took place on February 15, was also attended by lawyers Liu Shihui (刘士辉) and Li Fangping (李方平); Liu’s home was searched on February 24, and police discovered the photograph on his computer. Further details about Sun’s detention are not currently available.
24. Tan Lanying (谈兰英), a 67 year-old Shanghai-based petitioner-activist, was criminally detained for “assembling a crowd to disrupt the order of a public place” on February 21. Tan was released on March 23. Tan, together with veteran petitioners Yang Lamei and Guo Yigui, were separately taken into custody by police at a site in Shanghai identified in online postings calling for “Jasmine Revolution” protests, though there is no

indication the three knew anything about the protests. Tan has been petitioning for 17 years, seeking redress for grievances related to the forced demolition of her home.

25. **Wei Qiang (魏强)**, a human rights activist, was seized in Beijing on February 26 and detained in a series of detention centers in Beijing until March 21, when he was returned to his hometown of Yan'an City. He was again detained in Yan'an, where police issued both a detention notice for "creating a disturbance" as well as a notice that Wei was to be sent to two years of RTL. At the end of March, however, Beijing police once again returned Wei to the capital, where he was detained in an unknown location for 22 or 23 days. At this place, where Wei was held in solitary confinement, he was chained to a chair except for six hours during which he was allowed to sleep. One time when Wei felt ill and was not able to wake up after six hours, guards stomped on him and beat him. Wei reported that he heard many other detainees held in adjacent rooms in this detention facility. Wei was then once more taken back to Yan'an, where the head of the police used his knee to knead on his spine, injuring his waist. On April 30, Wei was released on bail to await trial. Wei, originally from Xi'an City, Shaanxi Province, moved to Beijing in 2010. On February 20, he used his Twitter account (@Watchmen725) to report from the scene in front of the Wangfujing McDonald's, one of the locations identified in the call for "Jasmine Revolution" protests.
26. **Wei Shuishan (魏水山)**, a Zhejiang Province-based dissident and democracy activist, was criminally detained on March 5. However, as of the time of writing, Wei's family has yet to receive a formal detention notice so no further details are currently available. Wei is a member of the banned China Democracy Party.
27. **Weng Jie (翁杰)**, a Beijing resident, was criminally detained for "creating a disturbance" on March 2. Weng had been present at the Beijing site picked for "Jasmine Revolution" protests on February 20 and was later seized by police. Weng was detained in the Chaoyang District Detention Center until March 25, when he was released on bail to await trial.
28. **Xie Qingguo (谢庆国)**, a Shanghai petitioner, was seized in Beijing on April 29. Xie had traveled to Beijing with more than 1000 fellow Shanghai petitioners to demonstrate outside the National Letters and Visits Bureau. Xie was returned to Shanghai and criminally detained before being released on May 7.
29. **Yang Lamei (杨腊梅)**, a Shanghai-based activist, was seized on February 20 and held on suspicion of "assembling a crowd to disrupt the order of a public place" together with fellow petitioners Tan Lanying and Guo Yigui. Yang was released on March 23. The three, all veteran petitioners, were separately taken into custody by police at a site in Shanghai identified in online postings calling for "Jasmine Revolution" protests, though there is no indication the three knew anything about the protests.
30. **Yang Yong (杨勇)**, a Zhejiang-based netizen, was taken away by police on April 1 and later criminally detained. It is believed that Yang, whose Twitter account is @think9, was detained because he spread information on Twitter about the "Jasmine" protests online. Yang was held in the Jiaxing City Detention Center, where he was reportedly subjected to abuse, before being released on April 22 on bail to await trial. Yang is currently coalescing at home.
31. **Yao Yuping (姚玉平)**, a Shanghai petitioner, was seized in Beijing on April 29. Yao had traveled to Beijing with more than 1000 fellow Shanghai petitioners to demonstrate outside the National Letters and Visits Bureau. Yao was returned to Shanghai and criminally detained before being released on May 7.
32. **Zhang Jiannan (张健男)**, better known by his online name, Secretary Zhang (张书记), was seized at his home in Beijing on March 2 and criminally detained for taking part in an "illegal demonstration." Zhang was released on bail to await trial on April 1. Zhang was the founder of the website 1984 BBS (<http://1984bbs.com>), an online discussion forum dedicated to discussion of current events and the publication of censored news, which was shut down by the government on October 12, 2010. His twitter account is @SecretaryZhang.
33. **Zhang Yanhong (张燕红)**, a Shanghai petitioner, was seized in Beijing on April 29. Zhang had traveled to Beijing with more than 1000 fellow Shanghai petitioners to demonstrate outside the National Letters and Visits Bureau. Zhang was returned to Shanghai and criminally detained before being released on May 7.
34. **Zheng Chuangtian (郑创添)**, a human rights activist, was criminally detained for "inciting subversion of state power" by police in Huilai County, Jieyang City, Guangdong Province on February 26. Officers also searched Zheng's home; it is not known what, if anything, they confiscated. On March 28, Zheng was released on bail to await trial and returned home to Huilai County.
35. **Zheng Peipei (郑培培)**, a Shanghai petitioner, was seized in Beijing on April 29. Zheng had traveled to Beijing with more than 1000 fellow Shanghai petitioners to demonstrate outside the National Letters and Visits Bureau. Zheng was returned to Shanghai and criminally detained before being released on May 7.

36. Zhang Yongpan (张永攀), a Beijing-based legal activist, was criminally detained for “creating a disturbance” between April 14 and May 13. He has since been released on bail to await trial. His detention is believed to have been in retaliation for his online support for activist Wei Qiang, who disappeared into police custody in February.

Information about one individual who has been detained in a psychiatric hospital:

1. **Qian Jin (钱进)**, a pro-democracy activist from Bengbu City, Anhui Province, has been held since February 26 in the Anhui Huaiyuan Rongguang Hospital, a psychiatric facility, after being seized by Bengbu national security police on February 25. On February 26, a group of police officers escorted Qian to his home, where they confiscated his computer before taking him to the hospital. In mid-June, Qian—who does not suffer from mental health problems—was despondent during a visit by his sister since he had already been detained for more than three months and the “sensitive” date of June 4 had passed, yet he still had not been released. The two previous times officials had detained Qian in a psychiatric hospital, he was released after three months.

Information about three individuals who have been subjected to residential surveillance outside their homes:

1. Ai Weiwei (艾未未), prominent Beijing-based artist and activist, was reportedly released on bail on June 22 and is awaiting trial on charges of economic crimes. Ai had been held under illegal residential surveillance by police at an unknown location since early April. His wife, Lu Qing (路青), was able to visit him on May 15, which had been the first time Ai had been seen since he was seized by police at Beijing’s Capital Airport and prevented from boarding a flight to Hong Kong on the morning of April 3. At that time, police searched Ai’s studio in Beijing, confiscating all computers and hard drives, and contended that he was under investigation for “economic crimes.”
2. **Tang Jingling (唐荆陵)**, a human rights lawyer from Guangzhou, was taken into custody on February 22 on suspicion of “inciting subversion of state power,” and subsequently placed under residential surveillance (jianshi juzhu). “Residential surveillance” is a form of pre-trial detention. According to Article 57 of China’s Criminal Procedural Law (CPL), a suspect under residential surveillance must be held either at home or at a designated dwelling if they have no permanent residence. Detaining Tang, who has a home in Guangzhou, in another location therefore breaches this legal provision. Attempts to contact or visit his wife, who has been intimidated and periodically restricted in movement, have failed. Policemen have guarded his apartment and stopped anyone trying to enter.
3. Wu Yangwei (吴杨伟, aka Ye Du), Guangzhou-based author and activist, has been placed under residential surveillance (jianshi juzhu) in Panyu County, Guangdong Province for “inciting subversion of state power” on March 1. On March 2, police escorted Ye Du back to his home in Guangzhou, where they confiscated a computer, CD-ROMs, USB drives, books, documents, and other items, then took him away again. Officers did not issue a full list of confiscated goods. Ye Du was originally taken away from his home on by police on February 22. According to Article 57 of China’s Criminal Procedural Law (CPL), a suspect subjected to residential surveillance must be held either in her/his home or a designated dwelling if s/he has no permanent residence. Detaining Ye Du, who has a home in Guangzhou, in another location therefore breaches this legal provision. Sometime in May, Wu was said to be back home but was being barred from contacting anyone and living under close police monitoring.

Information about 26 individuals who have been subjected to enforced disappearances during the crackdown; those names in bold are still missing and are at high risk of torture or other mistreatment while held illegally incommunicado:

1. Gu Chuan (古川), a Beijing-based author and human rights activist, was missing between February 19 and April 22. On February 19, about twenty Beijing policemen searched Gu’s home without presenting their police IDs or a search warrant. They confiscated two computers, two cell phones and some books. When Gu’s home was searched, the policemen said the search was related to Gu using Twitter to repost messages about the

“Jasmine Revolution.” Further details about his experience while missing or his current health are not presently available.

2. **Hu Di (胡荻)**, a Beijing-based netizen and writer, has been missing since March 13.
3. **Hu Mingfen (胡明芬)**, accountant of prominent artist and activist Ai Weiwei, who went missing on April 8.
4. **Jiang Tianyong (江天勇)**, a Beijing-based human rights lawyer, was missing between February 19 and April 19. According to Jiang’s wife, he appeared to be in decent health when he returned home. On the afternoon of February 19, Jiang was seized from his brother’s home and driven away by men identified by his family as Beijing policemen. Police returned that evening and confiscated Jiang’s computer. The police never presented police IDs or any search or detention warrants at any point during the proceedings.
5. **Jin Guanghong (金光鸿)**, 47, a Beijing-based lawyer with the Beijing Jingfa Law Firm, disappeared on April 8 or 9 and returned home on April 19. Jin is one of the few of those disappeared during the current crackdown to publicly acknowledge being tortured. He is unable to clearly recall the details of what happened to him. CHRD learned that Jin was held first in a detention center and then moved to a psychiatric hospital. While in the psychiatric hospital, he was beaten by unidentified individuals, tied to a bed, given injections of unknown substances and forced to ingest unidentified medicine.
6. **Lan Ruoyu (蓝若宇)**, a Chongqing-based graduate student, has been missing since February 27. Police also confiscated a computer belonging to Lan, a student at Communication University of China.
7. **Li Fangping (李方平)**, a Beijing-based human rights lawyer, was kidnapped outside the offices of Yirenping, an NGO, around 5 pm on April 29. Li was able to briefly speak with his wife, telling her “I may be gone for a period of time... can’t talk more.” He was released on May 4.
8. **Li Tiantian (李天天)**, a Shanghai-based human rights lawyer, was missing between February 19 and May 24. After her release, CHRD learned that Li was taken from her home in Shanghai by police, who also searched the residence and confiscated two computers. Following a day of questioning by police, she was taken to a guesthouse in an unknown location and placed under “residential surveillance.” She returned to her hometown in the Xinjiang Uyghur Autonomous Region upon her release. Li maintains a blog (<http://blog.sina.com.cn/u/1896094822>) and her Twitter account is @litiantian.
9. **Li Xiongbing (黎雄兵)**, a Beijing-based human rights lawyer, went missing on the morning of May 4. He returned on May 6. Li has represented political and human rights activists, including Yang Chunlin (杨春林) and Yuan Xianchen (袁显臣), victims of religious persecution and discrimination, as well as groups including the former NGO Gongmeng, which Li represented in its dealings with tax officials in 2009. Li also serves as a legal adviser to health rights NGO Aizhixing.
10. **Liu Anjun (刘安军)**, a Beijing-based human rights activist, was seized outside of his home on February 18 by a group of officials including local police and National Security officers. The officers, after beating and kicking him, forcibly took him to a rural area outside of Beijing where he was guarded by local villagers who were being paid 50 RMB a day and given food and drink by local officials. Liu added that officers confiscated his two cell phones and stole 300 RMB from him. Liu went on a 10-day hunger strike to protest his illegal detention and, as a result, was taken to a hospital on March 18, where he remained under guard until he was freed. Local officials who visited him during his detention told him to “shut up and mind his own business.” He was freed after 45 days of enforced disappearance. Liu believes that his detention is related to an interview he gave on February 16 to Radio Free Asia about the jasmine revolution in Egypt.
11. **Liu Dejun (刘德军)**, a Beijing-based netizen, was missing between February 27 and May 13. While Liu was missing, police went to the home of Liu’s sister, in Wuhan City, on three occasions to search her computer as well as items left there by Liu. Officers did not provide any legal notification regarding Liu’s disappearance on any of these occasions, and officers in Beijing and Wuhan contacted by the family refused to provide any information about Liu’s whereabouts.
12. **Liu Shihui (刘士辉)**, a Guangzhou-based human rights lawyer, has been missing since February 20. Before he disappeared, Liu was brutally beaten by a group of unidentified individuals while waiting at a bus stop to participate in the February 20 “Jasmine Revolution” protests in Guangzhou. There is unconfirmed information in recent days that he has been released but attempts to contact him have failed. His relatives denied any knowledge of his whereabouts.
13. **Liu Xiaoyuan (刘晓原)**, 46, a Beijing-based human rights lawyer with the Beijing Qijian Law Firm, went missing between April 14 and 19. Liu, a friend of Ai Weiwei’s, had indicated his willingness to defend Ai

before he disappeared. After Liu reappeared, he told *The Guardian* that he did not want to give any details about what had happened to him during his disappearance.

14. **Liu Zhenggang** (刘正刚), designer who works for prominent artist and activist Ai Weiwei, who went missing sometime around April 12.
15. **Liu Zhengqing** (刘正清), in his 40s, a Guangzhou-based human rights lawyer with the Guangdong Fulin Guotai Law Firm, went missing on March 25. During his disappearance, Liu's home was raided three times and police took away computers, printers, and other personal belongings. He reappeared on April 29. He has represented Falun Gong practitioners and human rights activists. He is now released on bail awaiting trial on suspicion of "inciting subversion of state power."
16. **Tan Yanhua** (谭艳华), a Guangzhou City-based human rights activist, has been missing since February 25.
17. **Tang Jitian** (唐吉田), 42, a Beijing-based human rights lawyer, formerly with the Beijing Anhui Law Firm before his license to practice law was revoked in 2010, was seized on the evening of February 16 after attending a lunch meeting with a dozen activists to discuss how they might provide assistance to human rights defender Chen Guangcheng and his family. After Tang was held incommunicado for three weeks, he was sent back to his hometown in Jilin Province. Tang is under "soft detention" and is in very poor health. Authorities have warned him and his family not to speak out and to have no contact with the outside world.
18. **Teng Biao** (滕彪), a Beijing-based human rights lawyer, was missing for 70 days, between February 19 and April 29. Teng Biao's wife, who confirmed his return, said she could not comment on his health or any other details of his disappearance. Teng disappeared after leaving his home to meet with friends. Reportedly, policemen from the Beijing Public Security Bureau's National Security Unit searched Teng's home the following day, confiscating two computers, a printer, articles, books, DVDs and photos of Chen Guangcheng.
19. **Wen Tao** (文涛), former journalist and assistant to Ai Weiwei (艾未未), has been missing since April 3. Wen was seized by plainclothes police officers outside of his girlfriend's home in the Caochangdi neighborhood of Beijing's Chaoyang District on Sunday afternoon. Wen was fired from his job at the *Global Times*' English-language edition for reporting on a demonstration led by artists down Chang'an Avenue in February 2010 protesting the forced demolition of a Beijing arts district.
20. **Xu Zhiyong** (许志永), 38, a Beijing-based professor, legal advocate, and director of the Open Constitution Initiative (Gongmeng), which was forced to shut down in 2009, disappeared for one day around May 7, again on May 20 and then on June 22. He has been under police surveillance or "soft detention" since mid-February.
21. **Yuan Xinting** (袁新亭), Guangzhou-based editor and activist originally from Sichuan Province, disappeared in early March.
22. **Zeng Renguang** (曾仁广), aka 'Romantic Poet' [浪漫诗人], a Beijing-based human rights activist, was missing between February 22 and late March.
23. **Zhang Haibo** (张海波), a netizen based in Shanghai, went to the location for the planned jasmine protest in Shanghai on February 20 and was taken away by the police.
24. **Zhang Jinsong** (张劲松), driver of prominent artist and activist Ai Weiwei, went missing on April 10. He was reportedly released on June 22.
25. **Zhou Li** (周莉), a Beijing-based activist, was missing for about a month since March 27. Last year, Zhou was convicted of "creating a disturbance" and sentenced to one year in prison after participating in 2009 protests against Sun Dongdong (孙东东), the Beijing University professor who created an uproar in the activist community when he claimed that "99% of petitioners suffer from mental illness."
26. **Zou Guilan** (邹桂兰), a petitioner from Wuhan City, Hubei Province, was taken away from her home by National Security officials on April 17. Zou returned home less than a month later, but precise details about her disappearance are unclear.

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#### PREPARED STATEMENT OF SARAH COOK

JUNE 23, 2011

Thank you very much to the Commission for organizing this roundtable. One of the topics I've been asked to speak about today is the internet dimension of the work of Chinese human rights lawyers and the repression they have faced, as well as to reflect on some of the underlying dynamics that have contributed to this latest crackdown.

Drawing on findings from Freedom House's recently released *Freedom on the Net* report, as well as our weekly *China Media Bulletin*, I thought I would focus in my remarks on three points:

1. How human rights lawyers and activists in China have used the internet and social media.
2. What internet controls these individuals have encountered and how these are a microcosm of a broader, robust internet control apparatus.
3. How the long term practice of the Chinese Communist Party using arbitrary, extralegal measures to suppress free expression laid the foundation for this more recent crackdown.

## ONLINE ACTIVISM

As in many countries, when you go down the list of China's leading lawyers and activists, almost every one of them has used the internet to expose human rights abuses, educate fellow citizens about their legal rights, and advocate for genuine rule of law reforms.

Gao Zhisheng published open letters documenting the torture and killing of Falun Gong practitioners. Xu Zhiyong blogged about the inhumane treatment meted out to petitioners. Teng Biao used Twitter to alert other netizens that he had been arbitrarily detained. Ai Weiwei produced a video of people reading the names of the children who died in the Sichuan earthquake, then circulated it online.

But what is different from the dynamics in more democratic societies is that these initiatives are an indirect testament to the limits of legal recourse in China. In fact, it is in part because of the weakness of rule of law protections that many of these activists and lawyers have taken advantage of new media technologies to publicize abuses and press judges and government officials to respect the rights of their clients, and more recently, of themselves.

## ENVIRONMENT OF HARSH INTERNET CONTROLS

The other aspect to keep in mind is that they are engaging in these activities in the context of the most robust, sophisticated, and multi-faceted internet censorship apparatus in the world. One, that according to a recent study on internet freedom that Freedom House released in April, has further expanded and tightened over the last two years.

These individuals have encountered the gamut of internet controls that play out in China, from blocked websites to disabled blogging accounts, from "invitations to tea" to enforced disappearance and torture. Many of them keep multiple blogs, playing hide and seek with censors, hoping that even if commentary on one blog is deleted, perhaps another hosting service may be more lenient.

So, for instance, for Gao Zhisheng to post an open letter or Teng Biao to use Twitter, the first thing they have to do is safely get around the so-called "Great Firewall." In May 2009, Ai Weiwei's blog was shut down after he repeatedly posted the details of children's deaths in the 2008 Sichuan earthquake and aired accusations that they were caused in part by official corruption. Xu Zhiyong's blog was shut down in July 2010. In other instances, such as surrounding the 2010 awarding of the Nobel Peace Prize to Liu Xiaobo, the internet and mobile-phone connections of dozens of prominent lawyers and bloggers across China were disrupted, in an apparent effort to stop them from spreading news of the award, particularly via Twitter.

And then there are the offline tactics. Though the latest detentions have been the longest, over the past five years, practically every one of these human rights defenders has experienced one incident or another of being abducted, beaten, and in some cases, badly tortured, including being shocked with electric batons.

Perhaps a more insidious dynamic has been that as real world measures against them escalate, in some instances, we've seen a corresponding implementation of censorship related to their names, an attempt to make them disappear in the virtual world as well. Following Ai Weiwei's abduction in April, censorship has not only applied to his name but directives have been leaked that include orders to delete within ten minutes even an editorial with veiled reference to him. Gao Zhisheng, who has been disappeared for over a year, was listed as a sensitive key word on a list leaked by a Baidu employee. A search for his name on China's most popular search engine primarily produces state-run news sources referring to him as a "criminal." There are no links to his own writings.

What is striking in the case of both of these men is that in an earlier era, they were the subject of quite a bit of official support and media coverage. In 2001, Gao was named one of the top ten lawyers in China in a legal debate competition on television sponsored by the Ministry of Justice. And of course, Ai Weiwei was invited to the design the Bird's Nest for the 2008 Beijing Olympics. And now, the state is hoping people will forget they exist.

## WHY IS THIS HAPPENING?

As other panelists have noted, we too, in Freedom House's various assessments of political rights and civil liberties, have observed a backsliding in the Chinese government's commitment to the rule of law since 2006. But what is worth noting is that even during the earlier part of last decade when limited legal reforms appeared to be moving forward, in parallel, was an extralegal world, a world of makeshift detention centers, forced labor camps, and plainclothes police forces torturing with

impunity. That is the world that tens of thousands of petitioners and Falun Gong practitioners have been experiencing for years.

Many of the lawyers we're talking about here today have spoken about their encounters with this world in their writings. They have voiced the concern that the tactics and strategies developed to suppress one group can also be quickly and easily applied to others. It is evident from their writings that the reason they take such risks to work on politically sensitive cases is because they feel very strongly that if the current system is not able to protect these innocent people from such severe abuses, every Chinese citizen is at risk as well.

Thus, the current series of abductions cannot be viewed in a vacuum. Rather, what we're seeing manifest in recent months is an expansion of suppression. It is the reflection of a decision taken somewhere at the top of the Party that a group of individuals whose work and activism had previously been tolerated are now "persona non grata" and that the Party is willing to apply the full force of a pre-existing extralegal repressive apparatus to silence them. And, of course, they are able to take such actions unconstrained by institutional mechanisms like an independent judiciary.

From that perspective, were Gao Zhisheng and some of these lawyers here today, one thing I think they would recommend is for U.S. policy to go beyond focusing on them, despite the urgency of their plight. They would urge serious action to address the plight of the full range of clients and causes they have defended. Taken together, the victims of Communist Party repression go far beyond dozens of activists, amounting to tens of millions of people. When the day comes that these people have their rights protected, that is when lawyers will no longer need to worry about being abducted or disbarred either.

Given the harshness and scale of this recent crackdown and other signs of the Chinese leadership backing away from a commitment to the rule of law, it may be time for a recalibration of U.S. policy on human rights in China. A revised strategy should be developed based on an understanding that the current leadership, and the leadership to assume power in 2012, are very unlikely to institute crucial legal reforms, while continuing to pursue a policy of enhancing internet controls, particularly on speech of political and social consequence.

A few other recommendations that I hope will be helpful for our discussion:

**1. U.S. officials should speak frankly of Chinese abuses:** When the Chinese authorities engage in acts that clearly violate international human rights commitments and Chinese law, high-ranking members of Congress and the administration should consistently articulate that such violations have occurred, similar to recent remarks in response to Russia's rejection of an opposition party's registration. A less vocal approach can be construed as acceptance or acquiescence in these abuses, which is not a signal U.S. officials should, or that many would want to, send. On particular human rights issues, the legal arguments these human rights lawyers are making to Chinese courts may be a helpful resource.

**2. U.S. official should meet with human rights lawyers and activists:** When U.S. policymakers travel to China, they should meet with human rights lawyers and activists working on relevant issues, in addition to meeting with government officials. Beyond showing support and solidarity for their work, these individuals are able to provide visitors with a credible, first-hand account of events at the grassroots level of Chinese society that may otherwise be hard for outsiders to access.

**3. The U.S. should continue efforts to expand internet freedom in China:** The U.S. and other government should continue to support and explore the expansion of methods that counter the effect of internet controls in China, including tools that allow Chinese users to circumvent information blocks. As evident from the work of these lawyers, the boomerang effect of information being posted outside and then trickling back into China is an important channel of communication, particularly on topics that are heavily censored within China. Beyond the direct impact on free expression, a further closing of the information space in China portends very poorly for fundamental governance and rule of law reforms.

**4. U.S. officials should address the most serious abuses in dialogues with Chinese counterparts:** In conversations and dialogues with Chinese officials, policymakers should push not only for reforms that the Communist Party may be more amenable to implementing, but also address the most victimized groups and large-scale abuses, such as those committed against petitioners, Falun Gong practitioners, Tibetans, and Uighurs. Though these groups may appear to some to be on the margins of society, in practice, the repression they face affects tens of millions of people. Moreover, the tactics developed to sup-

press their rights can spread and pose a serious obstacle to genuine rule of law in China.

Thank you.

**Additional resources:**

Freedom on the Net: [www.freedomhouse.org/freedomonthenet2011](http://www.freedomhouse.org/freedomonthenet2011)

China Media Bulletin: [www.freedomhouse.org/cmb](http://www.freedomhouse.org/cmb)

PREPARED STATEMENT OF MARGARET K. LEWIS

JUNE 23, 2011

Mr. Chairman and distinguished Members of the Commission, I am privileged to be invited to participate in this roundtable and greatly appreciate the Commission's efforts to improve American understanding of China and the specific issues at hand.

The topic of today's roundtable—"Current Conditions for Rights Defenders and Lawyers in China, and Implications for US Policy"—is timely and complex. In my brief opening remarks, I have been asked to place the recent crackdown in the broader context of overall legal reform and rule of law developments in China, especially with respect to reform efforts in the criminal justice system. I will focus on the first part of today's topic, namely, addressing what are the current conditions, and then briefly suggest policy implications that flow there from.

The path of legal reform in China never did run smoothly, but I think it is fair to say that it is a particularly challenging time for legal reform. In part, this reflects an overarching political climate that emphasizes stability and is wary of anyone who is seen as rocking the boat.

A week from tomorrow, July 1, marks the 90th anniversary of the founding of the Chinese Communist Party. The Party has demonstrated impressive adaptability over its six decades of uninterrupted rule. Despite reports of some disagreements among the top leaders, the public face is one of orderly transition on a periodic basis, as seen in the handing of power from the third-generation leaders to fourth-generation leaders in the early 2000s and, as currently playing out, to the fifth-generation leaders. As the composition of the Politburo Standing Committee and other top positions are negotiated, it is not surprising that candidates for the next generation of leadership would take a risk-averse stance when it comes to advocating significant reforms, especially when those reforms could be unpopular with current leaders. Looking beyond the immediate term, the public accolades by current and rising members of the Party leadership for the harsh law-and-order tactics used by Bo Xilai, the Chongqing Party Secretary and rising star on the national scene, raise serious questions whether we can expect a more pro-reform climate after the leadership transition is complete.

Exacerbating the cautious climate is the leadership's awareness of popular unrest in the Middle East and concern that fermenting discontent at home could blossom into China's own Jasmine Revolution. It is difficult to quantify public discontent but, at a minimum, the rhetoric out of Beijing has moved beyond the ubiquitous slogan of "harmonious society" (*hexie shehui*) to emphasize "social management" (*shehui guanli*) and preserving stability. From a legal reform perspective, my concern is that the government fundamentally views lawyers as undermining stability rather than enhancing it. When I was in China last month, I was struck by a decrease in the level of candid conversations at various meetings on legal reforms as compared with even last year.

Turning particularly to how this climate impacts criminal justice reforms, there is no shortage of formal laws and regulations on the books in China. And, in fact, the past year has seen ostensibly promising reforms. Along these lines, the Criminal Law was amended this spring to decrease the number of death-eligible crimes by thirteen, leaving a total of fifty-five death-eligible offenses. Reports that the number of death-eligible crimes decreased by 19.1 percent—a simple mathematical formula dividing thirteen offenses by the original sixty-eight offenses—sounds more dramatic than the expected percentage decrease in actual executions. In reality, the reforms will likely have a much smaller impact on the total number of executions because the death penalty was seldom imposed for those crimes anyway.

As further example of recent legal reforms, this past year the five government bodies that participate directly in the criminal justice system issued two sets of evidence rules that are notable for providing a mechanism to suppress illegally obtained evidence, most conspicuously coerced confessions. The announcement of these rules closely followed the disclosure of a wrongful conviction scandal involving a farmer named Zhao Zuohai. Zhao was convicted of murdering his neighbor, but he fortunately had his death sentence commuted to a long prison term. Ten years after



his conviction, the alleged murder victim showed up very much alive. The media and Internet were soon aflame with reports that police tortured Zhao to extract his confession.

The problem is that lawyers who actually seek to implement these reforms are hitting serious political roadblocks. There have been but a few scattered reports of lawyers successfully using the new evidence rules to suppress illegally obtained evidence. Disturbingly, in July 2010, the lawyer for a defendant named Fan Qihang submitted evidence that Fan was tortured, including a secretly made video of a detained Fan showing scars on his wrists that he said resulted from the police shackling and suspending him during interrogations. Despite the recent implementation of the new rules that call for a hearing when there is evidence that the police obtained a confession through torture, the Supreme People's Court promptly upheld the sentence, and Fan was executed in September 2010.

In addition to the substantial challenges that lawyers face when trying to operationalize reforms and serve as effective advocates for their clients who are accused of crimes, lawyers are finding themselves in court as defendants. For example, the conviction in 2010 of lawyer Li Zhuang for encouraging people to give false testimony raised concerns that he was really being targeted for zealously defending unpopular clients. Considering such perils and the general lack of social prestige for defense work, it is a wonder that people pursue careers as criminal defense lawyers in China, especially outside of the relatively financially lucrative realm of white-collar crime.

In speaking about the role of lawyers, it bears emphasizing that the topic of today's roundtable is the current conditions of both lawyers *and* rights defenders. As a member of the legal profession, I hope that all lawyers seek to defend people's rights. In China, so-called "rights defenders" go beyond licensed lawyers: There is an additional population of non-lawyers who are nonetheless seeking to use the legal system to effectuate change in China, such as the blind activist Chen Guangcheng who taught himself enough law to assist villagers with their grievances against the government. Since completing a four-year sentence for damaging property and disturbing traffic, Chen and his family have been held under informal house arrest. Reports of government-sanctioned physical abuse underscore that the term "soft detention" (*ruan jin*) utterly fails to capture the harsh reality of Chen's post-prison life.

As another example of a non-lawyer citizen seeking to defend people's rights, Ai Weiwei, the renowned artist and outspoken government critic, was detained by authorities at the Beijing airport in April 2011 on suspicion of "economic crimes." Over a month later, the government clarified that Ai is being held for tax evasion and destruction of corporate financial documents. This is not a simple story of allegations of economic crimes. Rather, Ai's high profile and dogged efforts to expose government corruption, including seeking justice for parents who lost children in shoddily constructed schools during the 2008 Sichuan earthquake, make him a bigger threat than any mere tax evader.

Going forward, a key question is how can the PRC government manage expectations of the populace in the face of a graying population, growing environmental pressures, and other destabilizing effects. The incorrigible long-term optimist in me wants to believe that the government will eventually view lawyers as a positive force to help express citizens' grievances and effectively channel them through a formal process instead of leaving people to vent their frustrations in the streets. However, at present, the emphasis is on the rhetoric of the "rule of law" with a reluctance to allow people to actually make use of the laws in a meaningful way.

Finally, what are the implications of this challenging landscape for US policy? The official US-China Human Rights Dialogue and slightly less official Legal Experts Dialogue are valuable for maintaining high-level bilateral discussions, though I think we must keep our expectations very modest for these forums' ability to spur legal reform in China.

Although we also cannot expect instant gratification from more informal legal cooperation, I remain convinced that sustained interpersonal contacts will serve as a positive force for legal reform. For example, China's efforts to reduce wrongful convictions open up possibilities for collaboration on projects regarding techniques to improve evidence collection, including use of DNA evidence. Similarly, new rules in China requiring asset disclosures by government officials as a means of reducing corruption offers the possibility for a substantive discussion about the US government's experience with requiring disclosures as a prophylactic tool to prevent conflicts of interest. And, indeed, the new rules addressing the exclusion of illegally obtained evidence followed years of comparative legal research and many projects involving foreign assistance. The scope for substantial bilateral collaboration is, no doubt, limited at present. But there are shared avenues of interest that dovetail

with the PRC government's stated areas of reforms and that can and should be explored.

Thank you for the opportunity to present a few thoughts. I look forward to our discussion with the Commission.

