

PROMOTING HUMAN RIGHTS IN CHINA

REPORT OF THE
CHINA HUMAN RIGHTS STRATEGY STUDY GROUP

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**A. Briefing Paper by Andrew J. Nathan, “The Human Rights Situation in
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B. Participant List

BACKGROUND

In April 2001, Human Rights in China convened a meeting, funded by the Open Society Institute, to try to generate innovative strategies for outside actors concerned with improving the human rights situation in China.

The meeting was motivated by the conviction that the human rights situation in China is worsening and the influence of outside actors – governments, NGOs, multilateral institutions, and others – is diminishing. China has blocked diplomatic initiatives, co-opted the “dialogue process,” isolated human rights NGOs from the mainstream of China policy making, and set Western business communities against human rights NGOs. It has turned much of domestic Chinese opinion against the international human rights movement. It has made individual political prisoners into hostages for exchange, without altering its overall strategy of repression. China’s ideological and public information strategies have made news of human rights abuses routine or marginal in the international media while continuing to suppress such information in the domestic press, creating the widespread perception that the human rights situation is better. For an analysis of China’s human rights situation and strategies, see Appendix A.

The international human rights movement faces a difficult challenge in China, and needs to explore new strategies. To start this process, the study group met in New York on April 26-27, 2001. It consisted of 25 individuals with diverse perspectives and types of expertise. The group’s mandate was to consider strategies that were innovative and that might be of interest to the broadest community of relevant actors. A steering group of six persons discussed the proceedings of that meeting over the course of several weeks and refined its suggestions to create this report. For a list of participants, see Appendix B.

The report is not a consensus recommendation, but instead represents the ideas that the steering committee drew from the discussion. It consists of ideas for new strategies and projects, some using traditional methods of human rights work, some involving innovative approaches, which we offer for the consideration of all interested groups and individuals, to develop and use in whatever way they see fit. The projects are not presented here as proposals for funding; such proposals might be developed after further refinement by HRIC or other organizations that want to conduct the work.

In suggesting new strategies, we do not mean to imply that existing strategies should be abandoned. On the contrary, our recommendations are based on the premise that the existing approaches of human rights groups working on China will continue.

EXECUTIVE SUMMARY

STRATEGY OBJECTIVES:

- 1) To address issues that affect large social groups of ordinary Chinese people in their daily lives.
- 2) To promote growing rights consciousness in Chinese society.
- 3) To build institutions that protect human rights.
- 4) To exploit the twin opportunities of China's opening and the development of information/communication technologies.
- 5) To focus on human rights goals that the Chinese government has set for itself in its laws or through its ratification of international treaties.
- 6) To work both within Chinese society and from outside.
- 7) To engage with China but maintain pressure.

STRATEGIES:

The eleven strategy suggestions cluster into four groups:

Group A: Putting human rights back into development

1. Defending the most neglected: rights of rural residents
2. Labor rights: Subcontracting, corporate responsibility, and socially responsible investing

Group B: Institutionalizing accountability

3. Ending the extra-legal punishment system of "Administrative Detention"
4. Ending impunity, seeking accountability
5. International support for prisoner of conscience legal defense

Group C: Promoting a culture of rights

6. Online human rights resource center
7. Independent human rights monitoring in the PRC: the HRIC Office in Hong Kong
8. Chinese in diaspora coalition-building project

Group D: Strengthening international scrutiny

9. Monitoring engagement
10. Using standing bodies
11. Tapping into Asian solidarity

GROUP A: PUTTING HUMAN RIGHTS BACK INTO DEVELOPMENT

1. Defending the most neglected: rights of rural residents

Summary: This section suggests a research and advocacy project aimed at ending the legalized, systematic abuse of the rights of rural residents.

Rationale: Since its founding in 1949, the PRC has institutionalized a system which is profoundly discriminatory towards the residents of rural areas. Some Chinese commentators have compared this to the former South African system of apartheid, in that an ascriptively defined segment of the population lives under conditions of legal disability. The disadvantaged group is the rural population, who are classified as such by their possession of a rural household registration, or *hukou*, and who are officially defined as *nongmin*, or “peasants.”

Instituted in the 1950s to prevent rural migration into the cities, the system of residence registration has created a caste-like structure in which peasants are excluded from the better jobs in the cities, have no claim on the emerging social welfare system, and have access only to inferior educational opportunities, and in which peasants’ votes in people’s congress elections count for one-quarter of those of urban people. These institutions reinforce prejudices among urban dwellers, who often view peasants as dirty, “low quality,” and incapable of exercising rational judgment. Indeed the term “peasant” is redolent of this discriminatory attitude – China’s rural people are in fact for the most part commercial farmers, industrial workers in local industries, or migrant workers in urban construction and industrial enterprises.

The roots of the *hukou* system lie in the policies of rapid industrialization adopted after 1949. Influenced by socialist theory and by practices introduced by Soviet advisors, this developmental paradigm prioritized urban over rural development, industry over agriculture, and heavy industry above all other sectors. Politically, the urban “proletariat” was regarded as progressive while the rural peasantry was regarded as semi-feudal and in need of proletarian leadership. Limited state resources were concentrated on providing jobs, educational institutions, medical institutions, and a comprehensive welfare system in the cities, while rural areas were exploited for investment capital (labeled “state accumulation funds”) and left to provide for their own consumption and welfare funds.

The economic reforms launched in the late 1970s achieved their first great success – in some ways still their only unambiguous success – by liberating the rural workers from the commune system and allowing them to establish local factories or to migrate for work. Yet the structural discrimination built into the system has remained. Rural residents are still deprived of entitlements offered to their urban counterparts in almost all spheres: education, health, political rights, employment, freedom of movement, and so on. Chinese commentators speak of a “two-tier” system, even after two decades of reform policies.

Partly due to the lack of resources, rural people generally have the least access to

emerging mechanisms through which accountability can be sought, including the courts, lawyers, legal aid centers, and social organizations. Workers at least have a trade union that, although government controlled, is supposed to represent their interests, but farmers and other rural residents are allowed no peasants' association, even though some advocates have proposed this. In most parts of the countryside, the Women's Federation is a vehicle for implementing the state's population control policy (often coercively) rather than a recourse for women seeking help. Competitive elections to village committees (which in any case are not organizations of the government), while much ballyhooed by Chinese propaganda and the international media, have done little to better farmers' conditions. The village committees' jobs are to enforce the grain tax and birth planning.

In addition to pervasive day-to-day inequality, rural dwellers and people of rural origin are more likely than urban residents to suffer some of the most extreme violations of rights. Such violations occur either in the peasants' villages, when they resist excessive taxes and fees and coercive birth control, or when they try to fight against pollution of their lands and rivers, or in the cities when rural people move there to look for work. The violations include extra-judicial killings by police; state-created destitution, through demolition of housing and confiscation of food and goods as punishment, including for non-payment of taxes and for infringement of the population policy; displacement for infrastructure projects without proper arrangements for relocation; forced abortions and sterilizations; trafficking and sale of human beings; bonded labor and slavery-like conditions; forced corvée labor; and environmental poisoning, resulting in birth defects and deaths.

So far little systematic attention has been paid to documenting or alleviating rights abuses against rural dwellers. This is partly due to the difficulty of obtaining data. International media report little on the countryside. Although some researchers in China have been focusing on the rural situation, their numbers are not large and not all their information can be published. Western analysis of rural conditions has been academic rather than action-oriented. Chinese assessments of rural conditions tend to assume that rural poverty, inequality, and deprivation are inevitable, rather than seeing them as products of state policy, structures of governance, and economic and fiscal practices.

This lack of attention has left the Chinese government free to argue falsely that it has made great achievements in the realization of economic, social, and cultural rights, which it cites as justification for controls on civil liberties and political rights. The lives of rural people – still 70 percent of the Chinese population – give the lie to this claim in the most fundamental way.

Rural development projects are useful in alleviating rural poverty in specific locations. But they generally lack research and advocacy dimensions and fail to address the systemic roots of China's homegrown apartheid system. They deal with local problems, rather than with the fundamental issues.

Project idea: What is needed at this stage to combat this set of problems is a research-and-advocacy program. The first and most urgent need is to conduct research into

specific rights problems faced by rural people and into their roots in the discriminatory *hukou* system and in China's broader economic and social systems. Such an analysis should illuminate how state policy and state negligence contribute to rapidly growing inequality and to the routine abuses committed against rural people, and should propose constructive and realistic alternatives.

Much relevant information is available. Western China specialists have done extensive fieldwork and documentary research on the villages. The *hukou* system has been studied academically in China and abroad, and its impacts are well understood among specialists. Due to a lack of manpower in the human rights community, and a tendency to focus on more traditional kinds of human rights abuses, the information has not been put into a form that highlights human rights problems and opens up paths for advocacy.

With a research base, advocacy strategies will follow. These are likely to include tried-and-true methods – issuing reports, encouraging more press coverage, enlisting governments and relevant NGO's to bring pressure to bear about specific cases and specific policies, working with development agencies to help structure their programs to be more sensitive to human rights impacts. The focus on rural residents will also open up new opportunities – e.g., to work more closely with development agencies and with the worldwide environmental movement. It will also potentially gain the sympathy of a growing number of activist academics and researchers in China who are deeply concerned about growing inequality and the abandonment of rural people. An important benefit will be to remove one of the most convenient and fallacious arguments from the propaganda armory of the Chinese regime – its argument that it has achieved great things in protecting most people's right to life, right to a job, right to education, and so forth.

Such a project could be located within an existing human rights NGO or could be set up as a freestanding organization.

Further work needed: To refine this project idea, more information is needed about other NGO's or development agencies that are working in related areas. It would be important to consult with the environmental NGO community to be sure that this project was launched in a way that maximized the opportunities to share expertise and to work together. We need to know more about the disposition of development agencies (e.g., the World Bank) and foundations toward such a project, and about how to launch the project in such a way as to cooperate with rather than antagonize such actors from the beginning. Since the personnel involved in such a project will inevitably be limited in numbers, careful discussion and wide consultation should be devoted to selecting the most strategic issues to focus on in the first stages of work.

2. Labor rights: subcontracting, corporate responsibility, and socially responsible investing

Summary: Abuse of worker rights is one of the most widespread and strategically crucial human rights violations in China. It is also an area of enormous complexity and one in

which there are many groups already working. Although existing groups do excellent work, the problem is so large that more needs to be done. This project, which could be undertaken by existing groups or a new organization, would address a strategic point of pressure by focusing on labor standards in selected foreign-invested enterprises and in selected subcontractor enterprises. In doing so it could fruitfully combine research, standard-setting, advocacy, and networking.

Rationale: After rural people, urban workers are the largest category of persons affected by the flaws of China's human rights regime. This category includes workers in state-owned enterprises, foreign invested enterprises, and privately owned enterprises of all sorts – light and heavy industries, mining, construction, commercial enterprises, and so on. With China's increasing involvement in the world economy, more and more of these workers are producing wholly or partly for export.

The central rights violation in this domain is the denial of the right to organize: only China's official trade union, the All China Federation of Trade Unions, is allowed in Chinese enterprises, and it seldom enters into conflicts with management to protect workers' rights. Independent trade unions are vigorously suppressed. Facilitated by the denial of the right to organize are a host of other widespread violations. Workers are underpaid and over-disciplined, forced into involuntary overtime, forced to work excessively long hours, forced to work in unsafe and unsanitary conditions, denied payment of wages and pensions due to them, and denied adequate medical coverage. Migrant workers are denied full citizenship rights in the regions where they work and can be incarcerated in detention centers with horrific conditions if they do not have the right documents. Chinese workers are sent as export labor to other countries to work under indenture-like conditions, allowing recruiting agencies (mostly run by Chinese government bureaucracies) to demand high deposits, persecute those who dare to protest and imprison them on their return to China.

Labor rights are among the most fundamental of human rights. Workers in the modern sector are one of the groups most affected by government policy in any society, and the ability to self-organize in defense of their interests is at the root of democratic politics. Labor rights were among the earliest to achieve international recognition, with the founding of the ILO in 1919, and they are central to the Universal Declaration on Human Rights and to the two International Covenants on rights. The daily cost of their violation to millions of Chinese workers in injuries, ill health, and exploitation is incalculable.

China's violation of the rights of its workers contravenes the government's obligations both domestically and internationally. In the reform era, China has enacted a relatively comprehensive regulatory regime to protect workers from abuse, including the 1994 Labor Law, which includes provisions limiting working hours, providing for mandatory rest periods and holidays, and setting up mechanisms for resolution of disputes between workers and employers. China is a member of the International Labor Organization and signatory of 20 ILO conventions, although it has not signed those governing freedom of association or collective bargaining.

Yet there is no area of human rights where the resistance of the Chinese regime to fundamental improvement is more adamant. The Chinese leadership believes that any breach in the dike against independent labor organizations will lead to a flood of protest that would quickly undermine the regime.

Many organizations work in the area of Chinese labor rights. Besides trade union organizations around the world and comprehensive human rights NGOs, these include the Solidarity Center, the International Labor Rights Fund, Global Exchange, the China Working Group, the National Labor Committee, the Maquiladora Health and Safety Support Network, the China Labor Bulletin, the Asia Monitor Resource Centre, the Hong Kong Christian Industrial Committee, the Chinese Working Women's Network, the Asia Health & Safety Training Project, Human Rights for Workers, China Labor Watch, Verité, and Social Accountability International.

These programs are small and their impact has been limited. And although the concept is not new to them, they have not yet effectively brought to bear the weight of the international consumer and investor communities to make a difference in the conditions of Chinese workers.

Project idea: The approach we suggest has been tried, but not yet on a large enough scale to realize its potential impact. The idea is to focus on selected enterprises that serve as contractors or (more likely) subcontractors for manufacture of goods to be exported to the American or European consumer markets, and to expose violations in such firms to two relevant concerned communities: socially responsible investors and socially conscious consumers. This project could be undertaken as a strengthened focus of work by one or more of the groups already concerned with labor rights, or by a new organization.

The concept is simple; the execution would be complex. Conceptually the idea is to identify conspicuous rights abuses in specific factories that are linked to the international market, hold responsible the Western firm who is trade-marking and/or marketing the product, and use the Western firm as a channel of influence on the Chinese system. Given the limits on resources, only selected firms could be targeted, but they would symbolize wider problems, and the focus on their cases would alert other firms to their vulnerabilities to criticism and thus help drive forward the development of labor standards, company and industry codes of conduct, and oversight mechanisms. This strategy has been used with conspicuous success in several instances by Human Rights Watch (e.g., Mexican *maquiladoras*, Enron in India, Unocal in Burma). It has not yet been deployed with major effect in the case of China.

The bedrock of any such effort is detailed research into specific enterprises, in an area where research is not welcomed by the government or the enterprises. Nonetheless, the pioneering work of scholars like Anita Chan, Robert Senser, Lee Ching Kwan, Pun Ngai, Dorothy Solinger, and Mobo Gao, and some of the organizations mentioned above, has shown that such research is doable. The outreach component of this project is as daunting as the research component. The project personnel would have to develop links to the relevant consumer movement organizations, socially responsible investing firms, Asian and other NGO's, and international institutions, in order to put their research into

circulation. The staff would have to engage in skillful advocacy in order to broaden the impact of their research, and would need to become active participants in the political and business processes of standard-setting. The issue of labor rights intersects with so many other issues – the rights of migrant workers, the monitoring of “legal construction” projects, the rights of dissidents, environmental issues, corruption, poverty reduction/sustainable development, Chinese human rights generally, labor rights Asia-wide and world-wide – that it cannot successfully be promoted without coordination with many other projects and groups.

This project would also generate serious thinking, which should be done in coordination with other groups, on what to propose by way of solutions to the problems being highlighted. In the China context, in the absence of independent labor organizations or NGOs, codes of conduct have proved to be little more than paper commitments. It would also be important to address the institutional reasons for the failures of the bureaucracy to enforce China’s labor laws, and to promote strategic thinking about how to build independent capacity in this area.

Further work needed: Before embarking on such a project, it is necessary to learn more about how existing groups have tried to implement it, and what their experiences teach. The project should be launched in consultation with the consumer movement and socially responsible investing community. It would be desirable to have a candidate list of potential sectors and even potential subcontractors who can be investigated in the first round, and to identify a pool of potential research staff who have the skills and experiences relevant to this difficult research task.

GROUP B: INSTITUTIONALIZING ACCOUNTABILITY

3. Ending the extra-legal punishment system of “Administrative Detention”

Summary: China maintains an extra-legal punishment system that imprisons more people than the regular legal system, but which is far less known to the outside world. It includes camps for “reeducation through labor,” detention centers for “custody and repatriation,” the *Ankang* system of psychiatric hospitals run by the Ministry of Public Security, and other institutions. One thing these facilities have in common is that people are remanded to them by administrative, rather than judicial, procedures – hence the overall label, “administrative detention.” The proposed project would focus on these institutions, and engage in a multi-pronged strategy with the goal of eliminating all forms of detention outside the normal legal system.

Rationale: Much Western attention is focused on the development of the formal Chinese legal system – laws, courts, prisons – and the government’s efforts to establish the rule of law. Constructive engagement in this process, through such programs as providing training to legislators, lawyers, judges, and others, can make a significant contribution towards improving human rights conditions.

But improvement of the legal system will do nothing to improve conditions in the wide range of punishment institutions that operate outside the legal system, and in which large numbers of people are incarcerated. These include the system of “*custody and repatriation*” (C&R) under which “undesirables” of all types, including women and children, are detained without trial, occasionally for periods as long as a year or more, and then shipped back to their home towns and villages; the system by which individuals can be sentenced by police or work-unit security personnel to three-year sentences of “*re-education through labor*” (RTL) in camps; the system of *psychiatric hospitals*, known as the *Ankang*, run by the Ministry of Public Security; and a host of other institutions, such as establishments for forced drug addiction treatment and for rehabilitation of prostitutes and clients, “welfare homes” for the detention of elderly dissident clerics, and unit-level detention facilities set up entirely outside existing regulatory structures by local governments, institutions, and companies. The scale of such administrative detentions is vast. For example, in 1996, at a Ministry of Civil Affairs conference on C&R, it was announced that across the country more than one million “vagrant beggars” were taken into custody every year, as well as upwards of 100,000 indigent children, and that over 600,000 persons were “repatriated” or “assisted in returning home” – a total of 1.7 million detainees in C&R facilities alone in that year.

Human rights groups, including HRIC, have reported on some of the abuses involved in some forms of administrative detention. The principal focus of this concern has been on re-education through labor (see, e.g., Amnesty International, *China—Punishment Without Crime: Arbitrary Detention*, September 1991; Lawyers Committee for Human Rights, *Criminal Justice with Chinese Characteristics*, May 1993; Human Rights in China, *Detained at Official Pleasure: Arbitrary Detention in the People’s Republic of China*, June 1993). The United Nations Working Group on Arbitrary Detention has also reported on the problem of re-education through labor (*Report on the Visit to the People’s Republic of China*, E/CN.4/1998/44/Add.2, April 1998). The UN High Commissioner for Human Rights called for the elimination of all forms of administrative detention in the PRC.

However, the many other forms of administrative detention have hardly been researched, with some remaining entirely unknown outside the official institutions in China involved in administering them. C&R was unknown even to specialists until HRIC published its report on it in 1999 (*Not Welcome at the Party: Behind the “Clean-up” of China’s Cities—A Report on Administrative Detention Under “Custody and Repatriation,”* September 1999). Among reformers in China, this widespread system of detention was not on the agenda for discussion, since the authorities do not consider it a “coercive measure.” Likewise, the institutional and regulatory basis for the political abuse of psychiatry in the PRC had been virtually unknown outside the Chinese security bureaucracy until Robin Munro published his research on the topic in 2001. There are whole systems of administrative detention that have not been studied at all.

Far more thus remains to be done both to get more information on these systems and to generate the domestic political will and international pressure to end them. The time is ripe for a concerted multi-pronged strategy in light of recent NGO and UN efforts, and given the increased international attention that will be paid to the PRC in the period

leading up to the 2008 Olympics.

Specifically, there are seven areas of concern relating to administrative detention systems in the PRC:

- 1) Lack of due process in light of the inherently arbitrary nature of administrative detention and the confused legislative framework within which these systems operate;
- 2) Abusive conditions of the administrative custody facilities studied so far in C&R centers;
- 3) The inappropriate mixing of detainees who need protection – including children, trafficked women, and the mentally ill – with other detainees;
- 4) Self-perpetuation of the C&R system with its built-in incentives for the extortion of money from detainees and their families;
- 5) The fact that administrative detention systems often violate Chinese law and international standards;
- 6) Lack of transparency, which contributes to the abusive, discriminatory, and corrupt nature of the system;
- 7) The fact that the availability of methods of punishment outside the bounds of the formal legal system fundamentally undermines the limited human rights guarantees that have been incorporated into the criminal justice system in recent years.

Project idea: The main programmatic goal is to advocate the elimination of this system through a combination of outside pressure and promotion of new thinking, with a priority on getting the message to people inside China. The project envisions an interrelated research, advocacy, and education effort.

The project would undertake research and documentation of the hitherto unresearched forms of administrative detention, and would also collect more information on torture, ill treatment, and abusive conditions in detention facilities that have already been studied. This material would be publicized within and outside the PRC. HRIC's expanded Chinese website could be an important vehicle for circulating materials about these detention facilities and related Chinese and international human rights standards.

The project would show why these institutions are inconsistent with the development of rule of law and would also examine these abuses in the context of the PRC's international human rights obligations. The project would build on current international and bilateral mechanisms to develop multiple simultaneous strategies for exerting pressure on the PRC, including advocacy related to the UN Working Group on Arbitrary Detention, the UN Human Rights Commission, the EU-China human rights dialogue, the U.S-China dialogue, the China commission being established in the U.S. by Congressional mandate, and the Office of the High Commissioner for Human Rights, as well as high level state visits. The 2008 Olympics can also be used to call attention in particular to the C&R Centers, since they are likely to be used to clear "undesirables from the streets of Beijing.

Further work needed: To develop this project idea, a detailed research agenda and related advocacy plan needs to be outlined. More outreach also needs to be done to identify specific organizations and individuals within various domestic and international constituencies, including religious organizations, the local and specialized bars in the U.S, international jurists, other human rights NGOs, the media, and U.S.-China legal exchange programs and academic communities, including the law schools. These various constituencies are potential sources of lobbying support as well as advocacy input and assistance.

4. Ending impunity, seeking accountability

Summary: This project seeks to introduce and promote the concept of ending impunity in the PRC through interactive use of the Internet, human rights publications, and media advocacy work. It will also build upon and develop various national and international legal strategies for seeking redress and accountability from authorities responsible for past and ongoing violations of human rights.

Rationale: Throughout the world, the systematic denial of past human rights violations, and the lack of independent legal-institutional avenues for victims to seek redress and accountability, have often silenced victims struggling for justice, and allowed the cycle of brutality and abuse to continue. There is a growing body of international approaches that is important for breaking this vicious cycle. In some countries, serious efforts have been made to deal with past atrocities and crimes against humanity committed by old regimes under the general rubric of “transitional justice.” In South Africa, the Truth and Reconciliation Commission was designed to address past human rights violations, and to ensure the restoration of the dignity of victims, survivors, and relatives.

The PRC is not undergoing and may never undergo the kind of radical shift in regimes that opens the way for transitional justice. Nonetheless, in its transition toward rule of law, the PRC does face similar issues presented by the demands of its citizens for an accounting for past injustices. It is crucial to demonstrate, particularly through the use of Asian examples, the prospect of moving from a state of impunity to a system of rule of law, in which victims of rights abuses are able to seek redress. An awareness campaign in support of these initiatives can give people a sense of empowerment, realizing how their own struggle for protection can have an impact on historical processes of political change.

So far, this effort is in its earliest stages. Human Rights in China has supported a network of Chinese citizens called the Tiananmen Mothers to document the June 4, 1989, massacre, provide support for victims’ families and the injured, and join together to demand accountability from the PRC legal authorities. The Mothers petitioned the Supreme People’s Procuratorate for an official investigation of the 1989 massacre. With HRIC’s help, the Mothers circulated internationally both a paper petition and an online e-petition, which has so far collected 20,000 signatures. HRIC was also the leading force behind the filing of a U.S. federal lawsuit against the former Premier of the People’s

Republic of China, Li Peng, for his involvement in ordering troops to open fire in June 1989. The Tiananmen Mothers' actions are not just about their own fallen children, but about ending the cycle of official impunity that allows rights abuses in China to continue.

The challenge is to sustain and expand this kind of effort on the part of victims of China's many crackdowns, campaigns, and extra-legal punishment institutions. However, there are not even accepted translations in Chinese for the concepts of impunity and accountability, and few people are aware of the way these ideas are contributing to efforts elsewhere to institutionalize human rights protections. There are some efforts to introduce human rights into popular media and school education in Taiwan and Hong Kong, but much of the material is devoted to explaining human rights standards, rather than illustrating how human rights relates to current events and history, or how NGO and civil society activism can have an impact on political change through institution-building and norm-setting. There is also limited information available on the experiences of other NGO and grassroots efforts at addressing and eliminating abuses of state power.

Project Proposal: An education and media campaign could introduce the concept of accountability for human rights abuses to the Chinese-speaking world, and push for mechanisms to end impunity. The project would have three objectives: (1) to introduce the concepts of impunity and accountability to Chinese speaking communities; (2) to give this audience a sense of the great potential of human rights activism in addressing human rights abuses, seeking rights protections, and bringing political changes; (3) to draw upon and develop the insights from the experiences of other countries to addressing abuses of power.

The campaign kit would present material about the Tiananmen Mothers, and compare and contrast their experience with that of similar groups in other countries, such as the Madres de la Plaza de Mayo in Argentina. It would also familiarize the public with the international mechanisms that seek to end impunity for human rights abuses, such as the International Criminal Court. The project would seek to demonstrate how international human rights standards can be legally implemented, and to link the efforts of Chinese citizens seeking accountability to the growing international movement to seek accountability for rights abuses.

Materials could be disseminated through overseas Chinese media, and via the Internet, including on HRIC's Chinese website. An educational kit, including a handbook, CD-ROM and video, for secondary and university students, could be made available on-line.

The project should also coordinate with activists and legal experts to explore possible domestic measures and, if domestic remedies are exhausted, international actions. It is crucial to build the research capacity and seek legal consultation for this project.

Further work needed: The project needs to be well informed about existing experiences with transitional justice and their relevance to China. There are a number of institutions

doing research in this area, and the new project should be designed after adequate consultation to take advantage of their expertise.

5. International support for prisoner-of-conscience legal defense

Summary: The international legal community possesses resources that could be used to partner overburdened Chinese defense lawyers, who often take great risks in helping victims of political and religious repression. Foreign lawyers familiar with the Chinese legal system could assist the defendants and their local lawyers in numerous ways from abroad, thus strengthening not only the specific defense case, but the Chinese legal system as a whole. Starting with as many cases as can be handled, the eventual goal would be to assure that every defendant in every prisoner-of-conscience case has as effective a defense as is possible under Chinese law.

Rationale: Like other defendants, persons accused of criminal acts for exercising their political or religious freedom in China are entitled to a variety of procedural safeguards under the Criminal Procedure Law, including the services of a lawyer to argue in their defense. But such defendants and those involved in other politically sensitive cases benefit little from these safeguards. In such cases, the police, procuratorial, and judicial authorities are even more willing than usual to override procedural safeguards (e.g., limits on the time allowed for detention before “arrest,” equivalent to indictment, rights of access to lawyers and family members, right to a public trial). Outcomes in politically sensitive cases are decided in advance by Party authorities. And few members of the small pool of Chinese lawyers are willing to take on the defense of such cases in light of government reprisals against those who do.

Those Chinese lawyers who have taken such cases are overburdened and have found that they can do little in the face of the government’s determination to handle these cases harshly. Yet the Chinese authorities have called their legal system “fair,” “independent,” and “open,” and have claimed credit for forming partnerships with U.S. and European legal experts in reforming the Chinese system.

The experience of a few dedicated foreign lawyers – especially Jerome A. Cohen – shows that foreign partnering can help Chinese defense lawyers in politically sensitive cases to perform more effectively. Foreign lawyers cannot represent defendants in China, but they can perform a series of important services – finding Chinese defense lawyers, offering comparative perspectives and advice, prodding and advising the Chinese attorney, providing a measure of political protection, and enlisting international media attention and political pressure.

What is now a rare practice should become a regular one. Aside from the direct benefit of providing more effective counsel to defendants, such an effort will have salutary long-term results – invigorating the Chinese court system, shedding light on flaws in Chinese court procedures, and holding the Chinese authorities accountable in a concrete way for violations of their own procedural rules. Foreign lawyers and legal scholars who want to do something to promote human rights but are dissatisfied with the

ineffectiveness of the “engagement” programs with China can be enlisted in this effort.

Project idea: To generate this effort a small staff is required to recruit and guide foreign lawyers who would get involved as partners of Chinese lawyers in specific cases. The project might be headed or guided by Cohen, who has pioneered this type of activity with his involvement in the cases of, among others, Song Yongyi, Gao Zhan, Liu Yaping, and Fong Fuming, and who has recently retired from his partnership at Paul Weiss. The project should probably be independent of existing human rights organizations, because it needs to be sufficiently acceptable to the Chinese government that its involvement will be a help, not a burden, to the Chinese lawyers it works with. A small staff would be sufficient to identify appropriate cases in China, and then to recruit lawyers outside China. The project would develop relations with New York bar association, the ABA, and other such groups. These connections might lead onwards toward lobbying activities both in the West and in China directed at improving Chinese court procedures.

Further work needed: To refine the idea, proponents should undertake more consultation with Cohen, potentially interested foreign legal associations, and other legal experts. The project should be set up from the beginning in such a way as to obtain and preserve sufficient access to China to make it possible to do the work.

GROUP C: PROMOTING A CULTURE OF RIGHTS

6. Online human rights resource center

Summary: This section suggests that HRIC build a comprehensive, high-quality, informative, and interactive human rights website in the Chinese language. It would provide a powerful tool of empowerment in cyberspace for the world’s Chinese-speaking populations.

Rationale: The World Wide Web is an increasingly important information resource and communication tool, now with an estimated 20 million users inside China. Although it is generally not utilized by workers, farmers, and those most oppressed, and will not for the time being reach them directly, activists representing these groups are already beginning to discover this convenient tool. As the recent example of the suppressed Falungong shows, independent social groups have used the Internet in their self-organization and appeals for international support. Also, chat rooms and bulletin boards can, for example, focus on abuses migrant workers have suffered in Custody and Repatriation centers. Thus one of the objectives of such a website should be to provide human rights analysis of problems being discussed by such marginalized people, and action ideas on how to gain redress for them.

At the same time, the Internet is widely used by the new middle class of self-employed, young, urban, educated people, who are often apolitical and nationalistic, yet anti-authoritarian and pro-reform. This is a portion of the Chinese population with great potential influence over China’s political future, and who do not currently know much

about human rights or the international movement beyond what is carried in the government-controlled media. The web is the best way to reach them, but the website must be designed in such a way as to appeal to them.

Although the Chinese government has erected “firewalls” to block major human rights groups’ websites — including the current HRIC site — new technologies, and the limitations placed upon censorship by the sheer volume of information flowing on the Internet, mean that censored websites remain accessible. Savvy surfers in China have managed to find ways to navigate around government “firewalls.” An increasing number of Chinese users are accessing these websites via proxy servers that are based outside China and thus not obstructed by the cyber police. About a third of HRIC’s homepage hits, and an increasing stream of e-mail messages to the organization, come from inside China.

Given the continuing censorship that keeps much criticism of government actions, laws, and policies — particularly materials on human rights — out of the domestic media, the Internet is a powerful vehicle for monitoring, advocacy, communication, engagement, and outreach. A comprehensive human rights website in Chinese would provide an effective means to establish and maintain contact with a wide variety of groups to publicize rights abuses, mobilize activism, empower victims, and facilitate coalition-building.

Furthermore, a well-designed and multi-purpose Chinese website would allow us to communicate economically, efficiently, and rapidly with individuals, groups, think tanks and media, and even government agencies, in the Chinese speaking world. Through such a website, HRIC can strengthen cooperation and coordination with other organizations by pooling information, minimizing the duplication of activities, and making human rights resources on the Internet available in Chinese.

Project idea: Human Rights in China already has a website. The challenge is to make it effective, substantial, and visible. This challenge can be met through better use of Internet technology. HRIC intends to propose an initial two-year work plan to make its site a forum for the global sharing and exploring of human rights-related ideas in the Chinese-speaking world.

The current bilingual website, <http://www.HRICChina.org>, provides immediate postings of HRIC’s reports, press releases, news, an archive of past issues of its quarterly journal *China Rights Forum*, and so on. It needs to be upgraded in order to provide comprehensive and accurate information, in-depth analysis, interactive communication, and rapid responses and follow-ups to individual cases. The plan includes strengthening the website’s Chinese topic pages on issues like torture, the death penalty, freedom of expression, workers’ rights, children’s rights, and religious freedom. The site will also provide lively profiles of prisoners of conscience, and suggestions on taking action to address abuses of rights, whether through sending an e-mail or filing a law suit. The site will have direct links to other Chinese-language sites with substantial information on the Chinese human rights and democracy movement, on international human rights developments, and on human rights issues concerning Hong Kong, Taiwan, and Tibet, as

well as general resources such as the international rights mechanisms and instruments.

This requires creative and user-friendly pages, and a staff competent to obtain, translate into Chinese, and make accessible information currently available in the English media. We need to utilize available technology to make the site more interactive and easily accessible, in order to engage “netizens” and mobilize them across national borders.

Further work needed: The opportunities that the Internet provides need to be prioritized. Should the project make a special effort to track and expose web censorship in China? Should it monitor the behavior of Western-based electronic media companies in China, e.g., Yahoo! and AOL, and pressure them to not undercut human rights within their own domains? Should we occasionally send unsolicited emails to target audiences such as members of the National People’s Congress?

There is a need to consult technical experts to learn more about what is feasible, effective and economical. We should devote special attention to developing plans to defeat and evade Chinese censorship and assure maximum ease and security of access for users in China. The project should be planned in full consultation with existing groups running relevant websites – e.g., Democratic China. NED has an Internet Working Group that would provide a point of access to such groups.

7. Independent human rights monitoring in the PRC: The HRIC office in Hong Kong

Summary: Human Rights in China has maintained an office in Hong Kong since 1996. It is small, and its main function has been research. Since Hong Kong is now part of the PRC, and since it has proven possible to maintain the office of an independent human rights NGO there for five years, the office should be expanded both to intensify its research functions and to engage more actively in media outreach, education, and advocacy. As it is located inside the PRC, the Hong Kong office should focus on monitoring Chinese compliance with international human rights standards and conventions that the Chinese government has explicitly accepted.

Rationale: Hong Kong is part of the PRC but is ruled by a quasi-independent local government under the principle of “one country, two systems.” Under this government, legal protections for human rights have been somewhat eroded, yet the Hong Kong authorities have not sought to restrict the activities of a number of independent human rights organizations that had a presence there before the handover in 1997, including the Hong Kong office of HRIC. It is important to take greater advantage of HRIC’s presence in China to engage in more effective monitoring and advocacy.

This is so, first of all, for symbolic reasons. The existence of HRIC as a chiefly Chinese organization concerned with Chinese human rights already embodies the key point that human rights are not a foreign imposition on China. Centering an important

part of HRIC's activities in Hong Kong reinforces the point and symbolizes the fact that the location of the organizational headquarters outside of China (in New York) is only temporary.

In addition, Hong Kong is the best location for doing research, compiling data, and conducting publicity about China in both the Chinese and the international media. It is the best place to obtain rare printed materials emanating from the mainland (especially at the Universities Service Centre of the Chinese University of Hong Kong), a convenient base for the distribution of Chinese-language materials on human rights, and an important location to brief journalists, politicians, and others making visits to China. Even mainland researchers travel to Hong Kong to use materials in libraries there, and this presents HRIC with an opportunity to interact with a number of activist academics. The Hong Kong media, some of which are increasingly available in certain areas in the mainland, also affords a good opportunity to get human rights news and ideas to Chinese readers. Large numbers of mainlanders are now visiting Hong Kong, and many take advantage of the territory's freer media and independent bookshops during their stay. In addition to traditional media, Hong Kong also is making headway in bi-lingual (Chinese-English) information technology, which HRIC should use in facilitating its information dissemination on the Web.

HRIC's Hong Kong office is now devoted mainly to research focused on economic and social rights. This focus is based on the assumption that human rights are central to true development, whereas China's current development strategy is focused on creating a wealthy, powerful state, without much regard for resulting abuses of human rights. The main aim of HRIC-HK's research emphasis is to put the human rights dimension back into the debate about China's development, both domestically and internationally. All of the research findings are published in *China Rights Forum*, HRIC's quarterly journal published in Hong Kong, and are posted on our website – HRIC-Online: www.HRICChina.org. They also appear in articles submitted by Hong Kong staff to the local press.

Research focused on economic and social rights challenges the Chinese government's claim that it has restricted civil and political rights in order to achieve great gains in social and economic rights. It addresses the government's assertion that the main priority for China is the welfare of its citizens, and responds to deep concern in Chinese society about growing inequality, environmental degradation, and neglect of vulnerable groups. Finally, the information on social and economic rights gathered by HRIC-HK has been used to present an alternative picture of conditions in China at the hearings of UN committees monitoring compliance with various international human rights treaties, including those on eliminating discrimination against women and minorities. This information has been crucial in ensuring that the committees make useful recommendations to the Chinese government on further measures needed to implement the treaties in question.

Project idea: HRIC's Hong Kong office should be strengthened so the organization can more effectively carry out in-depth monitoring of China's implementation of human rights treaties that it has signed, with a focus on social and economic rights, and can

conduct stronger Hong Kong-based advocacy and publicity campaigns.

The office would deepen its existing research into the rights of women, children, migrants and minorities, and add new topics of research, such as education, focusing on the growing problem of the charging of fees for basic education, which has a particularly negative impact on access to basic education for children of the poorest rural families. Advocacy on issues emerging from this research can be used in the “standing bodies” and made available in Chinese through the Internet. (See other sections of this report.)

The strengthened Hong Kong office will produce Chinese-language human rights education materials that can be piloted locally and made available on the Internet to Chinese-reading people around the globe. There is an acute shortage of such materials, particularly those with an activist orientation and an awareness of Chinese and Asian history, as opposed to simple explanations of international human rights standards. The office is already producing a series of books on human rights themes and distributing them through bookstores in the territory. This is a good way of reaching the growing number of mainland visitors, who are often on the look out for such materials. Also, since many Hong Kong residents either come from the mainland and/or travel there regularly, the impact of human rights education projects—whether through local educational institutions or using creative cultural strategies—can reach beyond the territory’s borders.

The enlarged Hong Kong office will deepen cooperation with other Asian NGOs on such issues as accountability and impunity (currently Hong Kong is the center of HRIC’s Tiananmen Mothers Campaign). It will also develop more contacts with mainland activists and scholars who pass through the city, participate in Hong Kong based events, conduct seminars, make field trips to the mainland, and work more closely with local media.

The Hong Kong office will aspire to become a comprehensive resource center for human rights research and advocacy, and will be involved in many other projects identified in this report. It will become a center for human rights education and activism in Chinese, which will have direct impact on promoting human rights awareness and facilitating a human rights movement on the mainland.

Further work needed: Human Rights in China is prepared to present this idea as a formal proposal.

8. Chinese-in-diaspora coalition building project

Summary: This project enables the human rights community to reach out to persons of Chinese origin outside of China, especially in the developed countries – to begin with, in the U.S. – in the work of promoting human rights in China. The first step is to explore areas of overlap of interests and concerns with organizations active in that community.

Rationale: Dating back to the 19th century and earlier, Chinese have sojourned and

immigrated to the West as laborers, sailors, students, and merchants. For two centuries, Chinese settlers in the U.S. maintained ties to their families, villages, and the Chinese government. Besides sending support to their families, Chinese in the U.S. provided economic and political support to various democratic, nation-building, and anti-imperialist movements at home. From the perspective of the U.S. government (and the American public), overseas Chinese ties to families and communities in China have alternately been viewed as positive bridges between the U.S. and China and as threats to U.S. security. From the perspective of the PRC government, overseas Chinese have also been viewed with a mixture of positive and wary attitudes.

Taiwan and Hong Kong are the two largest sources of outside investment in the Chinese mainland economy. Recently, the government has announced a series of enhanced policies to bring in overseas Chinese investment capital as part of China's strategy to develop the vast western regions. The government has also launched a patriotic appeal for ethnic Chinese students to return to serve the Motherland. This policy is the PRC's first systematic recruitment of overseas Chinese students and provides incentives for their return.

According to Chinese statistics, some 130,000 Chinese studying overseas students have returned while some 250,000 have remained abroad (Xinhua News Agency, August 19, 2001). Shanghai cites the return of more than 25,000 overseas students, accounting for 20 percent of all returned overseas students, with the returnees registered to run more than 1,300 companies with a registered capital of 210 million U.S. dollars. These overseas Chinese students targeted by the PRC government are also an important constituency for building domestic human rights awareness and support for more democratic reforms. They are individuals who have been exposed to more open and democratic societies and ideas, and therefore bring more than their specialized expertise and training back to the PRC.

From the perspective of overseas Chinese, the two-sided role as diasporic citizens presents opportunities and challenges for influencing both their adopted countries and their land of origin. As of July 1999, there were 10.9 million Asian-Americans and Pacific Islanders in the U.S., or 4.0% of the U.S. population. Asian-Americans and Pacific Islanders remain the fastest growing racial/ethnic population in the U.S. Chinese are the dominant Asian ethnic group, constituting 22.2% in 2000. However, the ethnic Chinese population in the U.S. is diverse in terms of economic status, political leanings, and foreign-born status. A diversity of issues and interests is reflected in the numerous organizations that address civil rights, cultural preservation, immigration and race policy, and U.S-China relations.

To date, however, the diasporic Chinese community has not shown an interest in the issue of human rights. In our view, this is partly due to a fear of compromising family members and business relationships in the mainland, partly due to national pride and protectiveness toward China, partly due to a preoccupation with their own problems as an immigrant community, and partly due to a sense that human rights is an issue created and dominated by ethnically white groups. Yet the potential influence of this group – lobbying the government in the country of residence, working with the media,

lobbying the Chinese government, direct work with Chinese society, and providing resources to organizations concerned with human rights – makes it potentially too valuable a group for the human rights movement to allow to lie fallow.

First, a comprehensive survey of various organizations and a program of exploratory outreach to a selected list of organizations are needed to explore the possibilities for cooperation or parallel work. These would include organizations that would likely be sympathetic to human rights work, as well as more conservative organizations that have the resources and political clout to devote to human rights work but need to learn more before they would begin to be interested. Some examples:

- Law organizations such as the Asian-American bar associations, and civil rights organizations such as the Asian-American Legal Education and Defense Fund and the Asian-American law teachers group,
- Cultural organizations, including organizations that focus on Chinese culture although not run by overseas Chinese, such as the China Institute, the Asia Society, and more local Chinese organizations such as the Museum of the Chinese in the Americas, and the Asian American Arts Centre.
- Educational organizations such as more activist Asian-American studies institutes, the strong national and regional networks of Asian American law students' organizations, and programs like UCLA's Asian-American Studies Center, Queens College's Asian/American Center, and NYU's new Asian-American Institute;
- Grassroots issue-oriented groups such as the Asian-American Women's Shelter and the Asian-Pacific Islander Coalition for Health Advocacy (APICHA).

Initial outreach activities would include the organization of discussions and consultations, as well as the exploration of joint research, advocacy, or education projects. In order to broaden and build the overseas constituency to support human rights in the PRC, we need to focus on common issues of concern, for example, health and aids, women's issues, and freedom of expression.

Project idea: Human Rights in China is prepared to propose a project to undertake initial study and outreach, which would serve in turn as a basis for planning specific projects of cooperation between HRIC and specific organizations and institutions in the Chinese diaspora.

GROUP D: STRENGTHENING INTERNATIONAL SCRUTINY

9. Monitoring engagement

Summary: This project would provide independent monitoring of the multitude of constructive engagement projects that foundations, governments, and professional and academic institutions are engaged in with China; ensure that these projects do not compromise international standards; work toward the establishment of generally applicable measures of progress or deterioration in various fields of engagement such as

legal reform; and make constructive suggestions for ways in which the engagement process can be made more creative, productive, and rights-friendly.

Rationale: Groups, foundations, governments, universities and multilateral agencies have devoted much effort and funding to a broad array of projects that go under the rubric of “engagement.” Some funders have become exclusively invested in these projects as a matter of strategic choice. At the NGO level, engagement projects include the Ford Foundation’s projects supporting judicial reform, legal services, village self-governance, and the nonprofit sector; the Committee for Legal Educational Exchange with China (also Ford-supported); the Asia Foundation’s efforts in the area of legislative drafting; the International Republic Institute’s village election monitoring/training projects; various human rights training initiatives of the three Nordic human rights institutes; and a variety of university-based exchange and training programs. At the governmental level, they include European and other countries’ government-to-government “dialogues” and legal training and exchange projects. At the multilateral level, they include World Bank and Asian Development Bank projects in China, UNDP programs, and others.

In general the Chinese government has succeeded in taking control of standard setting for engagement programs and has shaped these programs so that their impact on human rights practices is slight. NGOs and foundations not only fund or conduct programs that the Chinese government approves – which is appropriate – but also have kept criticisms confidential and sometimes unvoiced, and have excluded from participation, and sometimes from access to information, persons and organizational partners that the Chinese government wants to blackball. Governments have excluded human rights NGOs from multilateral dialogues and from shaping dialogue strategies, consulting them only in the most nominal fashion. Instead, human rights dialogues are confidential, government-to-government, and unaccountable (see HRIC report: *From Principle to Pragmatism: Can “Dialogue” Improve China’s Human Rights Situation?* June 1998). In some cases the dialogue process has become a substitute for more critical approaches that could generate real pressure for change, despite the fact that many governments have tacitly acknowledged that dialogue has not produced any concrete results.

These problems result from a Chinese government strategy to separate the engagers from one other, and to divide all of them from independent monitoring groups and from those advocating strategies involving stronger criticism of Beijing’s abuses of rights. The Chinese government has thus managed to channel engagement into projects that will pose little direct threat to its standard way of doing business. Engagement has escaped accountability.

Those among the Chinese government’s interlocutors promoting such engagement strategies have become the first and in some ways chief victims of this state of affairs, because of the frustrating conditions under which programs are conducted and because of the lack of concrete results in terms of human rights improvements. Staff of engagement projects would find their hand strengthened in negotiating with the Chinese authorities if it were known that information about the terms, demands, objectives,

compromises, and promises made in dialogue and engagement projects are to be made public and that fair, objective assessment based on international standards will be forthcoming. In addition, people in China should have the opportunity to scrutinize the engagement process, and to critique the trade-offs being made, and they can do this only if they have the information about the specific programs involved.

Project idea: A way to move beyond the current stalemate is to establish a program that engages in sophisticated, constructive, concrete monitoring of the ground rules and accomplishments of engagement programs. Friendly to engagement as an approach, but independent, this program would serve the needs of the “engagement community” itself by circulating information, facilitating the exchange of experience, and facilitating the establishment of standards (e.g., relating to publicity, inclusiveness, and evaluation methods).

Those who “watch” the engagement process would seek information from all actors and from public sources. They would assess the effectiveness of programs and make public their evaluations. This may include comparative studies of different programs or of similar programs conducted by different groups or agencies or constrained by the guidelines of various foundations. And they would monitor the terms (fairness, participation, and feasibility) of the processes by which ground-rules of engagement are negotiated and follow up with compliance with these rule in practice. They may convene meetings of engagement project staff and funders to try to develop consensus on standards and rules.

Further work needed: Coordination is needed with the community that this project intends to serve – that is, the engagement community and its financial sponsors – in order to design the project in such a way that it can become a trusted part of that community rather than an unwelcome outsider.

10. Using standing bodies

Summary: This project will use informational lobbying in the UN human rights-related agencies and other international “standing bodies” to promote more sophisticated and demanding standard-setting for China. It will also work to publicize the standing bodies’ work to the Chinese public.

Rationale: The agencies informally known as “standing bodies” comprise a wide range of international and multilateral institutions, concerned directly or indirectly with human rights, of which China is a member or client, and here we stretch the term to encompass other institutions that seem to us to lend themselves to a coordinated approach. These institutions have enormous potential powers to set standards, carry out investigations, demand information, and set conditions. Yet the human rights community, including governments concerned with human rights, has made insufficient use of these institutions to promote human rights in China.

Treaty monitoring bodies: China has ratified a number of key international instruments (dates of ratification are in brackets): the Convention on the Elimination of Discrimination Against Women [CEDAW, 1980]; the Convention on the Elimination of Racial Discrimination [CERD, 1981]; the Convention Against Torture [CAT, 1988]; the Convention on the Rights of the Child [CRC, 1992]; and the International Covenant on Economic, Social, and Cultural Rights [ICESCR, 2001].

The Chinese government is required to submit periodic reviews of its implementation of these treaties to expert committees responsible for reviewing governments' compliance and recommending further action to achieve convention standards. As compared with earlier practices, the Chinese government has now upgraded its efforts at these treaty body hearings to at least go through the motions of responsible reporting. However, the government's reports still fail to present many important aspects of a given situation, and to report on reasons why convention provisions are not being implemented, generally focusing merely on legislation and policies, rather than describing the situation on the ground.

Committee experts have little time to prepare and are not necessarily competent on China, which makes NGO input crucial. These hearings are one of the few public forums where Chinese government officials have to respond to direct questions about human rights issues. In these forums, the dismissive and angry language about interference in internal affairs with which the Chinese government generally greets rights-related criticism is heard only rarely.

CRC, CEDAW, CAT, and CERD have made substantial and constructive recommendations to the Chinese government. China's ratification of the ICESCR will open new opportunities for monitoring and long-term recommendations.

International and regional conferences and thematic mechanisms: Over the past ten years, China has increasingly participated in UN conferences, thematic meetings, and regional forums that relate to human rights, including hosting the UN Fourth World Conference on Women in Beijing. Increasingly, China is playing an influential role in the standard setting in these international and regional events, but more systematic monitoring of its specific positions is needed. What can be said is that China uses these opportunities to promote concepts that reaffirm its own position and prevent possibilities of direct monitoring.

For example, just after the United Nations issued the Declaration on Human Rights Defenders in December 1998, together with 25 other states China signed a restrictive "interpretative declaration," which stated that the Declaration should not be understood to contradict the principles of state sovereignty and non-interference in domestic affairs, and that the rights it contains must be exercised in accordance with national legislation. In the ongoing negotiations on the Draft Optional Protocol to the Convention Against Torture, both China and the United States stood for reservations likely to undermine the Protocol, the main purpose of which is to allow periodic and *ad hoc* country visits by CAT. The possibility that states may opt out of the visit mechanism would greatly weaken the Protocol, making the monitoring it envisages impossible unless

states explicitly accept it.

On the positive side, international and regional conferences have issued authoritative statements on rights that can be used as a measure of the Chinese government's practices. An important example is the Cairo Conference on Population and Development, which came out with a consensus that all family planning should be voluntary, and that a focus on women's rights was the most effective approach for family planning.

Much more use could be made of the International Labor Organization, which has taken strong positions on a number of labor issues in China, including freedom of association and the imprisonment of independent labor activists. This will mean working with the international trade union movement, since only unions have the right to make submissions to ILO. It would be useful if existing labor groups monitoring labor practices in the PRC could institute a specific project on China's compliance with ILO Conventions, including publicizing such findings more widely.

International financial institutions: China is the World Bank's largest borrower, yet there is no independent mechanism for ensuring that this money is being used in ways consistent with human rights. This should be a matter of grave concern, both to the Chinese people in whose name this money is being borrowed, and to the international community, which is lending these funds.

Over the years, under pressure following exposure of destructive lending practices that have caused or worsened human rights abuses, the World Bank has developed a series of safeguards designed to prevent such harm. But these are applied flexibly in China. Institutions conducting feasibility studies and assessments of projects are often divisions of the Chinese government agency responsible for the project. This has been made clear recently by a World Bank Inspection Panel review of a proposed project in Qinghai involving migration into a minority area. The Inspection Panel found that seven out of eight of the relevant safeguards had not been properly applied in the impact assessment for the project. However, this Inspection Panel review would never have happened without the involvement of outside monitors and human rights activists.

Monitoring the implementation of World Bank guidelines, or other international assistance programs, does not merely serve to shame China. It is a means towards pushing for greater attention to human rights in development more generally. The UNDP and the IFIs now speak of "mainstreaming human rights" and "transparency and accountability" respectively, but outside monitoring will help them to apply these principles in practice.

Standard setting and application: As permanent entities that create and apply human rights-related standards to governments, these treaties, processes, and agencies have enormous potential influence. The application of the standards set by these standing bodies to conditions in China can potentially result in authoritative assessments of the Chinese government's practices, and generate recommendations that set benchmarks for needed change. These assessments and recommendations can then be taken up as a lobbying focus by other UN bodies, by governments and by other international actors, as

well as by those inside China who are pushing for change. They can also serve over time as measures of China's progress (or lack thereof).

For example, in its review of China's implementation of the Convention Against Torture (CAT) at its 2000 session, the UN committee that monitors the treaty recommended that China eliminate administrative detention, because of the strong link between such detention and the prevalence of torture. In February 2001, UN High Commissioner for Human Rights Mary Robinson used this recommendation when she called for the abolition of Reeducation Through Labor (RTL), one of the key forms of administrative detention. As the Chinese government moves towards "reform" of RTL, governments can employ the CAT recommendation to push for an end to this abusive practice.

Project idea: We propose the creation of a project that would develop expertise on the procedural rules of the standing bodies, conduct research on China's application of the relevant standards, identify and provide this information to the standing bodies.

As international and multilateral agencies, the standing bodies often have complex procedural rules, and these need to be understood if the process is to be used effectively. Moreover, many standing bodies are short of resources, and can seldom develop adequate information on their own to balance the one-sided presentations of government delegations. They depend for much of their information on NGOs. For example, the CAT recommendation on China was in large part the result of extensive documentation by NGOs of the problem of torture in administrative detention. Although in this case, as in others, this point of view also reflected concerns raised by some legal professionals and scholars inside China, the latter have little or no opportunity to bring such opinions to the international level.

A second function of this project would be to circulate information about the work of the standing bodies to interested constituencies inside China. (Here the project would work in collaboration with others described in this report, such as the Internet proposal and the Asian NGO's coordination project.) Unfortunately, the Chinese government blocks the domestic circulation of information about the standing body processes that examine China's practices. It also does not make the human rights treaties China has ratified a topic of its legal education campaigns, although domestic legal education is a constant topic of propaganda campaigns and many aspects of domestic law relate directly to specific treaty areas. For example, there has been no attempt to include information about the Convention on the Elimination of Discrimination Against Women in the campaign of legal literacy regarding women's rights.

Without systematic efforts to circulate information about the upcoming standing body reviews involving China, as well as their results, China's involvement with international human rights mechanisms can have little impact on the ground. This is a key role that outside monitors of China's human rights situation can play, often involving bringing concerns raised domestically into the international spotlight and thus contributing to assessments and recommendations that domestic actors can further use to push their agendas.

The work of the standing bodies can also become an important resource for promoting discussion about the meaning and nature of human rights in practice, particularly economic and social rights, which the Chinese government claims are its priority. In using mechanisms that China has accepted, it would avoid provoking a negative nationalist response. Focusing on standing bodies associated with the United Nations has a special importance given the singular prestige the world body enjoys in China.

China's cooperation with the international human rights regime springs from the need to be seen to be cooperative, particularly following international concern about human rights in the wake of the events of 1989. However, the usual assessment stops at the symbolic value of this or that move, without looking at the substance or implementation. More efforts to hold China accountable on the international stage can contribute significantly to making this engagement of China with human rights standards meaningful for people in China.

Further work needed: Staff recruited to work on this project will need to establish priorities, since the potential field of work is vast. Further study is needed to determine how best to begin the work – with what institution, problem, or project? A related issue is where the office should be set up – e.g., Geneva, New York, or elsewhere.

11. Tapping into Asian solidarity

Summary: The aim of this program would be to increase cooperation among Asian NGOs, particularly those that work on a regional level, and to provide sufficient information to allow existing networks to play a stronger role in supporting human rights activism inside China. There is great potential for developing cooperation to bring greater pressure to bear on China through Asian NGO's, the media, and in the longer term, some Asian governments.

Rationale: Human rights is an increasingly salient issue in Asia in relations among governments and between governments and their citizens. Many of the region's governments have generally good relations with the PRC government, yet there are serious tensions in these relations. In many of the countries on its borders, China is supporting repressive regimes, including through military assistance. Some of these states create problems for other neighbors, most notably Burma and North Korea. Privately, many government officials and academics see China as a bully in the region, although few say so publicly.

There is thus a significant potential for a more sympathetic approach to human rights diplomacy on China from Asian governments. But with the exception of some U.S. NGO work in Japan, almost nothing has been done to inform Asian governments or publics about human rights issues in China or to find areas of leverage that they might be willing to use to help improve the situation. At the very least, such advocacy might be useful in encouraging Asian governments not to participate in blocking international

initiatives on China's human rights situation in global fora such as the United Nations.

Second, a number of regional bodies are beginning to address human rights issues, and it is important that there be information available to such bodies about the human rights situation in China. Some examples are a UN project on trafficking in the Mekong sub-region; the Asia Pacific Forum, which brings together governments that have national human rights institutions; and the growing focus of the Asian Development Bank on projects on "rule of law," "governance" and poverty alleviation.

Third, the Asian region has one of the most vibrant NGO sectors of any world region. Many regional NGO networks and larger Asian NGOs are concerned about the restrictive interpretations China places on human rights and its unfriendliness to NGOs generally, and the impact this can have on norm-setting and the implementation of international standards in the region as a whole. They often find themselves confronting similar arguments within their own countries about the necessity of repression for the sake of development, or similar rhetoric about cultural exceptionalism. There are many region-wide initiatives on thematic topics, such as migrants, labor, trafficking, AIDS, national security laws, and the role of international financial institutions. Some regional groups are active in solidarity campaigns, for example, on Burma, and formerly on East Timor. Many of the human rights themes taken up on a regional level by NGOs are also important in the current pattern of abuses seen in the PRC. Yet it is rare that issues in China become part of these meetings, although many activists would be more than willing to include such issues in their joint campaign strategies. Many regional, national, or local groups are sympathetic to the Chinese pro-democracy efforts.

The input and pressure on other governments in the region can be more effective if they come from these governments' own citizens and groups. And provided sufficient information was available, as well as some resources to facilitate exchanges, Asian activists would be willing to engage in solidarity campaigns to support embattled activists in China. Yet there has been little communication and collaboration between groups working on China (including Chinese exile groups) and groups in or concerned about other Asian countries. Joining these groups' advocacy and monitoring efforts is one way to gain their support for advocacy and campaigns focused on China.

Joint Asian regional efforts would be a powerful response to claims emanating from Asian authoritarian governments that concerns about human rights are only Western. There is also significant potential for encouraging greater activism in China through campaigns for rights issues in other Asian countries, and through interaction with Asian NGOs. So far, the Chinese government has been able to define the notion of "Asian values" as consistent with its own human rights practices. Yet there is an alternative vision of Asian values in the region. There is strong support for universal human rights among Asian NGOs, as evidenced by the 1993 Bangkok NGO Declaration.

Project idea: Such a project must be based in Asia. Project staff would network primarily with Asian NGOs to identify areas of common concern. China information could be included in regional theme campaigns, and activities expressing solidarity with imprisoned activists in China supported. Where possible, the project would attempt to

facilitate the participation of activists inside China in regional NGO meetings on human rights. Conversely, materials produced by Asian groups and information about their activities would be circulated through the Internet and other means to people inside China.

Further work needed: This project would initially require a review of potential advocacy targets, both governments and NGOs. This will involve learning more about what other groups are already doing in this field, including NGO's concerned with other Asian countries. Then a strategy could be mapped for key interventions and provision of information to relevant parties. Discussions should be conducted with key regional NGOs on what would be the most appropriate entry points for such an approach.

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Appendix A:
CHINA HUMAN RIGHTS STRATEGY STUDY GROUP

Briefing Paper
The Human Rights Situation in China:
Developments and Dynamics

Andrew J. Nathan

On which aspects of the Chinese human rights situation should the international human rights movement – and other actors with potential influence – place their priority, and how can they be effective in producing changes on the ground? The answer depends on an analysis of past developments and future dynamics. This paper offers some points for discussion.

How bad is the human rights situation in China? There is a widespread perception that overall, the human rights situation has steadily improved, and that this is due to “engagement” or globalization. This is false, but precisely what is false about it?

Human rights are multi-dimensional. In the last twenty years, human rights in China have improved in some dimensions, worsened in others, and stayed about the same in still others.

- Areas of improvement: increased average living standards, increased personal privacy, government accession to international conventions, government participation in international human rights institutions and treaties, increased access to information, slightly increased independence of legislative institutions, greater independence of the media (albeit still government controlled).
- Areas of worsening: access to health care, access to education, access to retirement and other social welfare benefits, problems of migrants to the cities, human rights abuses in connection with land development and environmental damage (e.g., against protesters), intensified crackdowns against social groups that challenge the government (laid off workers, peasants protesting environmental abuse or local corruption, Falungong).
- Areas of stasis: repression of religious freedom, repression in Tibet and Xinjiang, repression of political dissidence, use of “labor re-education” to imprison people without trial.
- Ambiguous areas: criminal procedure (getting better?), independence of the courts (improving slightly?), death penalty (getting worse?), psychiatric abuse (getting worse or merely just discovered?), gay rights (movement to decriminalize?).

Several patterns can be noted.

- The party-state no longer aspires to transform human nature or control what people think. It has thus moved from being a totalitarian state to an authoritarian police state. This has widened the sphere of individual autonomy without consolidating reliable, legally defensible rights.
- Rights in the economic and social spheres, generally considered a strong point

of PRC rights performance, reflect the mixed effects of rising GDP and the collapse of the socialist welfare system. It is here that the appearance of improvement is strongest, but successes are attributable to the success of the overall economic growth strategy rather than to policy measures targeted to assure rights.

- Areas affecting the power monopoly of the CCP— which means most civil and political rights – are unimproved. If one considers these the core rights, to be key to all others, then the situation is in a large sense unchanged. One could even say the situation is worse, because repression has increased in response to social change.
- Where civil/political and social/economic rights overlap – e.g., the ability of citizens to petition against environmental damage or against layoffs or unpaid pensions – the rights situation remains abusive.
- As a response to years of diplomatic pressure, the government has positioned itself as being in favor of the international human rights regime, but as favoring a particular interpretation of that regime.

In general, the human rights situation is better than in the Mao years but is much worse than widely perceived. The trend over time has been inconsistent, marked by ups and downs that are not the same in each issue area. Broadly speaking, the situation today is worse than it was in the first decade of Deng Xiaoping's rule, 1979-1989.

What have been the causes of change and of resistance to change?

Internal factors:

- Economic growth has produced improvements in living standards. But growth has also produced damage to human rights, e.g., by creating job dislocation and environmental damage. It has also added to repression by creating rising expectations, geographic mobility, and other trends that cause political tension.
- There are strong domestic forces pushing for change – the legal profession, the journalistic profession, legislative institutions, courts. In general, forces of professionalization and institutional specialization tend to work in a “rule-of-law” direction. But the rule of law impulse runs out of steam when it approaches issues that are socially unpopular (gay rights, Falungong) or that are linked to political stability (dissent).
- Western intellectual and cultural trends are exerting a long-term pro-human rights impact, through returned students, news, culture, and so on. This is so despite the nationalistic counter-reaction against Western influence and pressure.
- The rise of the internet has had a positive impact on freedom of communication in practice, without creating any greater entrenched, defensible right to information.
- Corruption as a trend throughout the party-state has dual effects – it both leads to specific human rights abuses, and creates many cases where local authorities are unwilling to enforce repressive policies.
- Fear of political instability not only on the part of the regime, but on the part

of the populace as well, has been a powerful brake on demands to improve human rights. So has anti-foreignism, skillfully stoked by the government.

The impact of outside actors:

- Foreign governmental and NGO pressure directly on human rights issues has produced improvements that are either declaratory (accession to international covenants) or short-term (release of particular prisoners) but have not produced long-term structural improvement. Still, their net effect has been positive, despite Chinese government rhetoric to the contrary.
- The following strategies have worked well: publicity campaigns focused on individual prisoners to shame the Chinese government; threats to condition MFN; “quiet diplomacy” and prisoner lists
- The following strategies have not worked well: government-to-government HR dialogues; internet-based and other information dissemination strategies (RFA, overseas-published magazines).
- What is our evaluation of the impact of programs in the area of “capability construction” such as programs to train judges, help in the writing of legal enactments (e.g., Asia Foundation), training for NPC staff and legal professionals (Ford Foundation)?

Why has China been relatively successful in blocking outside efforts to push improvements? Some hypotheses:

- Because it’s a great power.
- Good management of the foreign press – selling the improvement line.
- Good management of domestic opinion – getting support for the idea that human rights is a foreign imposition and a mask for political subversion or containment.
- UN Security Council enables China to take the lead among like-minded governments.
- Heavy lobbying and divide and conquer diplomacy with foreign governments and businesses has produced support for Chinese government position.
- Skilful management of the “dialogue process” has given Western governments something to do that has no impact.

Changing domestic and international conditions will affect the future evolution of rights.

- China has become more deeply engaged in the multilateral human rights institutions. These offer new points of access for human rights work, but the system works very slowly.
- China will enter the WTO. This will reduce the chance for outside forces to use economic pressures. It will intensify the mixed positive and negative human rights impacts of economic growth. It will also accelerate processes of professionalization and institutionalization that are in the long run beneficial for rights, and will add impetus to China’s cultural/intellectual opening. But WTO membership will also intensify social disruption, and hence the perceived need for repression. Frictions with the West over trade rule infractions, plus the social and economic costs of WTO, have the potential to

create an anti-Western backlash. Since actually withdrawing from WTO would be even more costly than staying in, this backlash is likely to be channeled into cultural and political resistance which would be detrimental to human rights.

- Modernization as a broad process will produce changes beneficial to human rights (more wealth and welfare, more cosmopolitan thinking, a larger middle class, more individual freedom). But it will also lead to an increasing welfare gap and to more worker and peasant activism by persons negatively affected. Growing social conflict will add to the repressive impulse not just toward groups directly involved and political dissidents, but toward any groups deemed nonconformist or threatening (e.g., religious groups, ethnic minorities, liberal intellectuals and professionals).
- The security conflict with the U.S. over Taiwan and TMD is likely to sharpen under the Bush administration, and tensions may sharpen between China and Japan. These developments will tend to push human rights off the bilateral agenda and intensify Chinese government resistance to outside human rights pressures.
- U.S.-Europe-Japan diplomatic relations are becoming less cooperative across the board thanks to developments like NMD and the Bush indisposition to assign troops to defend European security interests. The already difficult task of concerting multilateral diplomatic approaches to China/human rights will become even more difficult.
- There is the likelihood of a succession struggle, as Jiang Zemin and Li Peng have to retire in 2002/2003. This always contains the possibility of a breakthrough to a more human-rights friendly regime, but it is more likely that the political struggle will make it more difficult than ever for pro-human rights forces within China to exert influence through gradual institutional evolution (that is, succession struggle will hamper the increasing autonomy of legislature, courts, media).

Questions for further discussion: Are European attitudes changing in ways that offer prospects for the HR movement? Is the corporate social responsibility movement gaining steam in a way that we should know about? Are there changes in working procedures or institutional culture in the World Bank that are important for us to notice? Are there increasing, or diminishing, prospects for multilateral cooperation on human rights between the U.S. and European allies? Do changes in Japanese politics hold hope for a stronger Japanese role? What other factors should we consider?

Priorities for outside actors' concerns. Should outside actors focus on human rights issues that are (a) most critically bad and thus urgent for attention no matter how resistant to improvement, (b) most ripe for improvement due to social or ideological changes in the Chinese system, or (c) most amenable to influence from outside? Of course, different actors have different strategic possibilities, which we will discuss elsewhere in the conference. But here are some considerations affecting the priority that should be assigned to different areas of abuse.

- Civil and political rights – classic concern, well rooted in Western public support; once these are fixed, the Chinese people can themselves fix the rest.

High level of resistance on part of government due to linkage with political instability and even subversion. Lack of public support within China.

- Labor rights – ethical responsibility now that foreigners have invested in China; legally binding on China under international law and a flagrant area of violation; substantial support group within China; potential angles of access through WTO “social clause,” World Bank, foreign corporations, etc., but these are difficult to mobilize; strong government resistance, viewed as life-and-death matter for regime survival.
- Women’s rights – an area where regime ideology is compatible with many foreign concerns, and where resistance comes from society, culture, local officials. Any attack on population planning program lacks support w/in China but the possibility of more effective results is one the regime would listen to.
- C+P rights around issues of resistance to environmental abuse – a focus that draws in wider support groups both outside China and within, and where the Chinese government at high levels shares the understanding that progress needs to be made.
- Prison conditions – China in clear violation of international standards and vulnerable to criticism; has no powerful reason to resist improvement other than budgetary and cultural/institutional obstacles.
- Freedom of information – a concern that has support in the West, an area where China seems set against the “tide of history,” and where there is natural demand within China for improvement coming both from the public and from the media professionals. But an area where the government is resistant to pressure because of political stability needs.
- Legal due process rights – flagrant violation of international norms provides room to push; Mary Robinson has focused on labor re-education as an abuse; legal and legislative professionals in China are ready to make changes. Strong institutional resistance by security forces – if it works, don’t change it.
- Psychiatric abuse – spectacular abuses, a ready-made foreign pressure group (psychiatric professionals), a professional group in China to reach out to.
- Death penalty – strong campaign already exists by Amnesty. Total lack of public support within China.
- Economic, social, cultural rights – the area on which the Chinese government has itself chosen to focus – partly as a propaganda ploy, but also out of real conviction; yet an area of spectacular failures; ill-understood in the West. Poorly defined standards as a matter of international law. Budgetary obstacles to improvement. Area where constructive outside help is relatively welcome. Limited or no spillover effect of improvements in this area to the C+P area.
- Tibet/Xinjiang – strong political support in the West for seeking improvement in this area, but strong resistance by Chinese government and also public on grounds of national security.
- Religious rights – strong Western pressure groups, lack of support within China.

Appendix B:

CHINA HUMAN RIGHTS STRATEGY STUDY GROUP

Participant List*

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