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## Countries at the Crossroads 2011 - China

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### INTRODUCTION

The People's Republic of China has an authoritarian political system controlled by the Chinese Communist Party (CCP). Since 2007, Chinese authorities have tightened official controls over the media and civil society, and backtracked on legal reforms they enacted in the 1990s and early 2000s.<sup>1</sup>

Following the 1949 revolution, party leaders led by Mao Zedong attempted to remold China. They imposed communist ideology, a state-run economy, and absolute party-state control over citizens' lives. Such policies led to mass famine (the Great Leap Forward, 1958-60) and severe political turmoil (the Cultural Revolution, 1966-76).

In the late 1970s, the Chinese leadership under Deng Xiaoping launched the modern reform period. They relaxed economic and ideological controls, fueling an unprecedented 30-year-long economic boom. China has experienced a ten-fold expansion in GDP, replaced Japan as the second-largest economy in the world, and emerged as a world power.

These reforms are transforming the country. Hundreds of millions of people have been lifted out of poverty.<sup>2</sup> Urbanization is proceeding rapidly, with some 140 million migrants traveling annually between their rural hometowns to China's booming cities in search of work.<sup>3</sup>

The freedom enjoyed by ordinary Chinese citizens with regard to core personal decisions such as where to live and work has greatly expanded. Commercialized media and new technologies have given rise to a cadre of activist journalists and bloggers who push against the boundaries of state censorship, often exposing corrupt or illegal behavior on the part of local officials.

Central government leaders, however, remain adamantly opposed to fundamental political reform. They reject free speech and representative democracy. They repress peaceful protests with brutal force, as with the Tiananmen student demonstrations in 1989 and the Falun Gong spiritual movement after 1999. Moderate calls for political reform are met with lengthy prison terms. For example, 2010 Nobel Peace Prize winner Liu Xiaobo is currently serving an 11-year sentence for his role in organizing Charter 08, a petition signed by thousands of Chinese citizens and intellectuals calling for greater political and civil rights.

Despite opposition to significant political change that might threaten their control, central government authorities have pursued a range of limited reforms to fight corruption and abuse of power in local government. Since the 1980s, Chinese authorities have adopted electoral reforms that allow a restricted level of citizen participation in the selection of local officials. Starting in the 1990s, Chinese authorities took steps towards professionalizing the judiciary and allowing citizens a degree of legal redress for grievances against officials. Some officials have called for deeper reforms. In a series of speeches given in 2010, Premier Wen Jiabao criticized the excessive centralization of political power, warning that "without the safeguard of political reform, the fruits of economic reform will be lost and the goal of modernization will not materialize."<sup>4</sup>

Other authorities, however, have blocked these calls. Propaganda officials censored some of Premier Wen's remarks, while state-run media outlets parroted the official line regarding the need to avoid "Western" political reforms. Positive reform efforts have been undercut when they appear to be on the verge of generating substantial change. For example, authorities moved to exert tighter control over village elections in 1999, after local activists and officials attempted to extend such competitive polls up to township governments. In the last several years, central party authorities have made similar, increasingly concerted efforts to curtail the legal and judicial reforms of the prior decade.

As in the past, Chinese authorities have tightened their grip on dissent in advance of high-profile events, or in the wake of overseas developments. Officials engaged in widespread detentions of activists and petitioners prior to both the 2008 Beijing Olympics and the 2010 Shanghai World Expo. Following the 2011 Arab Spring, Chinese authorities commenced one of the most sustained and widespread crackdowns in decades. Authorities launched extrajudicial detentions of public interest activists and lawyers, increased harassment of journalists, and began interfering with virtual private network (VPN) services used by many citizens to evade extensive state internet controls.

However, tougher Chinese policies with regard to the media, civil society, and legal institutions are not simply the result of transitory state concerns with regard to specific, one-time events. Rather, they represent a more general effort, extending back several years, to curtail some of the limited reforms undertaken in recent decades.

China's future remains uncertain. Central Chinese authorities have chosen to prioritize party control at the expense of building autonomous legal and political institutions. This carries real risks for social stability. Rapid economic development is generating increased demands by citizens to participate in the decisions that affect their lives, and for authorities to more fairly respond to their grievances. In the absence of gradual and substantive steps toward political reform, this pressure is instead being channeled into mass citizen petitions and protests, populist official rhetoric, and nationalistic internet forums – unruly and imperfect release valves that erupt periodically (and with increasing intensity), but that fail to address the roots of building social discontent.

#### ACCOUNTABILITY AND PUBLIC VOICE

The CCP controls the institutions of government in China. China's executive branch, the State Council, notes that "Party committees serve as the leadership core over all [government and mass] organizations at the same level ... and through Party committees and cadres in these organizations, ensure that the Party's policies are carried out."<sup>5</sup> Central government authorities regularly reject multiparty democracy as a "Western" concept inappropriate for China's conditions.<sup>6</sup> They have harshly suppressed leaders of movements calling for political reform, including the Chinese Democracy Party, founded and banned in 1998, and Charter 08, established in 2008.

Party authorities choose key figures in executive and judicial institutions, with subordinate government officials selected through competitive civil service exams. CCP authorities tightly control the electoral mechanisms that govern Chinese legislative institutions, limiting eligibility to stand for election to China's local people's congresses (LPCs). Independent candidacies are technically allowed, but during the 2006-07 LPC election cycle, Yao Lifan, Lu Banglie, and other independent candidates for legislative office experienced numerous incidents of abuse, detention, and harassment at the hands of local authorities.<sup>7</sup>

CCP institutions are themselves governed by non-transparent internal processes. Unlike the Maoist period, no single figure dominates the political landscape. Top-level decisions and appointments are consequently the result of backdoor political machinations involving different factions. At top-level party conferences in 2007 and 2010, such processes resulted in the elevation of Xi Jinping to key deputy posts in the party and military bureaucracies, presumably as the designated successor to lead China following the scheduled retirement of current CCP general secretary Hu Jintao in 2012. Lower-level party officials respond to top-down personnel targets set by higher authorities, including economic development, social stability, and birth control targets.

There is a limited degree of public participation in the Chinese political system. Central party authorities have permitted a range of reforms to improve party governance and control, better monitor their own local agents, and respond to local discontent. Since 2005, authorities have increased their efforts to promote CCP-managed institutions such as the Chinese People's Political Consultative Conference and the approved eight minor political parties as channels for providing government and party leaders with suggestions. CCP officials have also carried out restricted experiments employing a degree of popular participation in selecting local party cadres. Party authorities, however, retain tight control over candidate pools and selection processes, and warn that candidates' popular support should not be the determining factor in ultimate selection decisions.<sup>8</sup>

Legislative institutions have evolved marginally away from their Maoist-era role as simple rubber stamps. China's national legislature, the National People's Congress, meets just two weeks a year in plenary session, for which the legislative agenda is largely (but not entirely) set by the State Council. Non-party members comprise roughly one-third of township and county LPC delegates.<sup>9</sup> Some delegates attempt to fulfill their legislative role in representing the

interests of their constituents and supervising the actions of executive agencies, despite their limited resources, general absence of professional staff, and prevailing political constraints.

Central party authorities remain deeply ambivalent toward civil society. They welcome citizen participation in state-led efforts to address pressing social problems and natural disasters, as with the 2008 Sichuan earthquake, which triggered the largest outpouring of domestic humanitarian aid and philanthropic work in recent Chinese history. But party leaders instinctively fear the emergence of truly independent institutions, viewing these as potential political challenges. Such concerns have been exacerbated in the wake of events such as the Arab Spring of 2011 and the 2003-05 "color revolutions," in which social movements toppled authoritarian regimes in the Mideast, Eastern Europe, and Central Asia. These fears have given rise to official policy lines such as "the Party-state guides, society participates, and citizens show concern for,"<sup>10</sup> a restrictive regulatory environment that severely limits the growth of an independent civil society, and arrests or detentions of activists.

Chinese civil society consists of a spectrum of organizations that vary considerably in terms of distance from state power, legal status, and official support for (or tolerance of) their activities. It includes a handful of national mass organizations (such as the China Women's Federation or All-China Federation of Trade Unions) that party authorities founded, fund, and control. These groups engage in a range of charitable activities and enjoy regular access and input into policymaking and legislative processes. Their positions vary little, if at all, from the official party line.<sup>11</sup>

Somewhat further removed from state power are the registered civil society organizations. As of 2010, these include 241,000 social organizations (voluntary groups ranging from industry professionals to environmental activists to bird-watching enthusiasts); 192,000 nongovernmental, noncommercial enterprises (such as private schools or hospitals); and roughly 2000 foundations.<sup>12</sup> National regulations issued in 1998 and 2004 grant these groups recognition as legal entities in exchange for acceptance of a degree of official supervision. Citizens seeking to found such an organization must locate an approved government or party bureau (or mass organization) to serve as a sponsor. Sponsors are charged with monitoring the activities of the registered organization in question. Often operating on shoestring budgets, registered organizations engage in a wide range of humanitarian activities. These sometimes skirt the boundaries of what authorities are comfortable with, providing assistance to vulnerable groups such as AIDS victims or displaced farmers. Depending on the prevailing political winds, such organizations may periodically be asked to provide input into the policymaking process.

Last are the entirely unregistered organizations. These consist of everything from informal networks of neighbors interested in community issues to organized groups of homeowners dissatisfied with the policies of their residential community to house churches seeking to practice their faith outside state-run patriotic churches. Estimates for the total numbers of unregistered organizations vary wildly, ranging into the millions. These organizations exist in a gray zone of legality. Some are suppressed as "illegal organizations." Many others are left alone as long as they remain small in size and do not openly challenge state controls.

Restrictive regulations severely hamper the development of Chinese civil society. Unable (or unwilling) to locate an approved sponsor organization, many organizations register instead as for-profit entities, creating potential tax problems. Lack of legal status creates difficulties for organizations that do not register. Unregistered groups of rural farmers engaged in cooperative economic development programs, for example, are often unable to borrow money from banks to fund their irrigation projects.

Chinese authorities have undertaken some tentative experiments with reform. The 2007 Law on Professional Farmers Cooperatives provided a channel for some rural organizations to register and obtain legal status. Government officials are liberalizing tax treatment for charitable contributions in an effort to build a domestic philanthropic sector. Some localities have permitted organizations to register with civil affairs authorities without obtaining a separate official sponsor. Central government officials, however, have regularly shot down proposals for more sweeping reforms that would eliminate the sponsorship requirement.

In recent years, Chinese authorities have stepped up their pressure on domestic civil society organizations and activists. They have launched a sweeping review of civil society organizations, requiring local authorities to review and rate all groups. Tax authorities are aggressively pursuing and sanctioning civic groups registered as for-profit organizations. In 2009, such tactics resulted in the closure of China's most well-known public interest law organization, the Open Constitution Initiative, and the arrest of its founder, Xu Zhiyong.<sup>13</sup>

Authorities have used vague subversion charges to jail activists such as Wu Lihong, who was sentenced in 2007 and released in 2010, and Tan Zuoren, sentenced in 2010, following their efforts to challenge the failings of local authorities regarding environmental degradation and earthquake safety.<sup>14</sup> Others have fled China under the threat of government persecution, such as noted AIDS activists Gao Yaojie in 2009 and Wan Yanhai in 2010.

Heightened pressure has also been brought to bear on foreign nonprofit organizations working in China. Groups working on projects that would have been regarded as less sensitive several years ago, such as legal and administrative reform, have been subjected to more aggressive surveillance and questioning.<sup>15</sup> In March 2010, onerous new restrictions restricting the transfer of foreign funds to Chinese organizations entered into effect.<sup>16</sup> Both foreign donors and

domestic Chinese recipients note that these regulations have created significant practical difficulties for their work.<sup>17</sup>

The party continues to maintain a tight grip over the media in China. Since 2007, authorities have further adapted traditional censorship, licensing, and propaganda controls for use in new technological arenas such as the internet, social-networking websites, and mobile-telephone text messaging. These controls are not absolute. Beneath the surface of state control, a vibrant and anarchic blogosphere is home to a bubbling mix of moderate, extreme, democratic, and nationalistic viewpoints. In addition, despite the risks of detention or demotion, Chinese journalists continue to push the boundaries of state censorship to report on scandals and abuses of power involving local officials.

Chinese authorities rely on a broad array of state-run print, radio, television, and online outlets to disseminate officially approved versions of news events, and on an extensive network of party propaganda bureaus to monitor and guide news reporting. Propaganda authorities give general guidance regarding the tone that media outlets are expected to take with respect to breaking news events. They also issue direct orders to avoid reporting on specific events or commentary viewed as threatening. In 2010, after 13 independent-leaning state media outlets coordinated the publication of a joint editorial criticizing the official household registration system and calling for reform, authorities forced the resignation of the responsible editor and ordered the deletion of the editorial from websites throughout the country.<sup>18</sup> Propaganda authorities regularly ban media organizations from independently reporting on crises that attract significant social attention. Examples include public health emergencies, such as the 2003 SARS outbreak; environmental disasters, including the 2005 Songhua River benzene spill; and food safety scandals, notably the 2008 melamine-tainted milk scandal. More extreme information blackouts also have been imposed in some instances. Following the outbreak of ethnic rioting in Urumqi in 2009, central government authorities severed internet, text messaging, and international phone access in the western region of Xinjiang for half a year.<sup>19</sup>

At the core of Chinese censorship is an expansive legal regime of prior restraints. A government license is required in order to publish a newspaper, work as a journalist, or report news on the internet. This has a chilling effect on speech. Media institutions engage in extensive self-censorship that goes beyond that required under vague official requirements for fear of losing their licenses. Many foreign and domestic internet content providers in China maintain their own staff to monitor and delete content that might be deemed objectionable, even absent specific state orders.

Chinese officials are modernizing their controls to keep pace with developing technologies. Regulations issued in 2007 require state ownership in companies providing online audio and video websites as a condition for obtaining an operating license.<sup>20</sup> Government authorities have experimented with or implemented registration systems that require users to provide their real names as a condition for blogging, using internet cafes, commenting on websites, or purchasing SIM cards for mobile phones.

Those who challenge official censorship risk severe sanction. Chinese authorities mount periodic crackdowns nominally directed against "illegal" or "pornographic" content, but which also single out politically undesirable speech.<sup>21</sup> They use vague subversion and state secrecy charges to jail journalists or writers such as Gheyret Niyaz (2010) and Chen Daojun (2008), who were imprisoned after issuing public commentary and criticism of government policies in Xinjiang and ethnic Tibetan areas, respectively.<sup>22</sup>

Central government authorities directly block many information sources they are unable to control. They jam foreign broadcasters such as the BBC and Voice of America. They maintain one of the world's most comprehensive systems for filtering and blocking internet content deemed objectionable. Since 2007, an increasing number of popular foreign media sites have been blocked, including YouTube, Facebook, Blogspot, Twitter, and Wikipedia. In 2010, citing a sophisticated cyberattack on their own corporate infrastructure and escalating Chinese government attempts to limit free speech, Google announced that it would no longer comply with official requests to censor search results on its search engine in mainland China, and began redirecting search requests on Google.cn to its Hong Kong search engine, which remains subject to blocking by mainland authorities.<sup>23</sup>

Since 2005, government officials have begun developing new techniques to "guide public opinion" on the internet. Party propaganda authorities have recruited paid, government-trained commentators to monitor online chat forums, participate in discussions regarding emerging topics of public concern, and steer commentary in progovernment directions. Estimated numbers of commentators range in the hundreds of thousands.<sup>24</sup>

Censorship does have limits. State censorship of foreign language media is less comprehensive, compared with Chinese-language publications. Technology-savvy citizens can use proxy servers or virtual private networks to circumvent official internet controls. And state restrictions sometimes backfire. In the summer of 2009, authorities partially backed down from efforts to require every computer sold in China to come pre-installed with internet filtering software targeting religious, political, and pornographic content after the plan generated a wave of opposition by Chinese citizens and foreign corporations.<sup>25</sup>

#### CIVIL LIBERTIES



On paper, the Chinese constitution recognizes a range of civil rights, including the freedoms of association, religion, and speech, as well as equal rights for women and guarantees against unlawful deprivation of personal freedom. But the lack of any mechanisms to enforce the constitution, combined with official efforts to ensure continued party control over Chinese society, mean that many of these provisions have little value in practice.

Chinese authorities routinely suppress dissidents who attempt to peacefully exercise their constitutional rights. Officials sentence some to lengthy prison terms under subversion and state security laws. The security forces spirit others out of Beijing in advance of high-profile international events, or subject them to house arrest and round-the-clock surveillance, as has been the case with Shandong rights activist Chen Guangcheng. During the fall of 2010, government authorities detained or threatened dozens of Chinese activists to prevent them from speaking to the media or celebrating Liu Xiaobo's Nobel Peace Prize award.

Despite undertaking some legal reforms in recent years (see Rule of Law), Chinese authorities continue to rely on a range of extralegal detention systems. Reeducation through labor (RETL), for example, permits authorities to sentence citizens to up to three years of administrative detention, with the possibility of a one-year extension. Such sentences are not subject to effective judicial review and lack even minimal procedural protections for defendant rights. Government authorities use RETL to sentence citizens for crimes such as prostitution and drug use, as well as political dissent and spiritual activism. According to official statistics, total RETL detainees in 2008 numbered between 160,000 and 190,000.<sup>26</sup> Actual numbers may be higher. Scholars and officials periodically discuss reforming the system, but no substantive steps have yet been taken. In recent years, some public interest activists and lawyers, such as Gao Zhisheng and Teng Biao, have been officially "disappeared" for weeks or months at a time, in the absence of any administrative or legal proceedings at all.

Violent crime is relatively uncommon in China. Comparative United Nations studies of official homicide rates, for instance, reveal that Chinese rates (1.2 murders per 100,000 individuals in 2007) are one-fourth the U.S. rate, as well as significantly lower than most Latin American nations and many Asian ones.<sup>27</sup> Official criminal incarceration rates (between 120 and 186 prisoners per 100,000 individuals) are also lower than in many developing countries and the U.S.<sup>28</sup> Naturally, these figures do not include individuals held in China's extensive network of administrative detention facilities, such as RETL camps.

Although a 2005 UN investigation found that torture of detainees and prisoners was declining (but still widespread),<sup>29</sup> many political prisoners continue to report severe abuse, including deprivation of food, sleep, and medical care and beatings by other inmates, all under the direction of prison officials. Those whose cases attract the attention of foreign media or governments tend to receive better treatment. With respect to ordinary criminal trials, prosecutors rely heavily on confessions extracted by police to obtain convictions (see Rule of Law), leading to repeated instances of forced confessions obtained under police pressure or torture. Chinese officials have made some efforts to curb these practices. Exclusionary rules adopted in the summer of 2010, for example, are aimed at barring court use of evidence obtained through torture.<sup>30</sup>

Chinese citizens lack effective means of redress against government abuses. Since the 1980s, authorities have enacted a range of reforms, such as the Administrative Litigation Law and the State Compensation Law, that give citizens some degree of judicial recourse against state organs. However, lack of judicial independence and the institutional weakness of the courts have rendered these reforms limited in their effects.

Lacking judicial checks on state power and alternative channels of political participation, many citizens resort to directly petitioning higher-level party and government authorities via "letters and visits" (*xinfang*) institutions in an attempt to redress their grievances. Deeply rooted in earlier imperial practices, such institutions are the result of centralized political power in the hands of a few and a paternalistic state narrative that depicts central government authorities as "father-mother" officials responsible for the welfare of their citizen-wards, which lead citizens to seek the personal intervention of top party officials (or the emperor) in resolving their individual and collective grievances. This is rarely successful. One survey found that only 0.2 percent of petitioners succeeded in having their complaints addressed.<sup>31</sup> Moreover, since local officials receive career and salary sanctions for petitioners who leave their jurisdictions and complain to higher authorities, they have significant incentives to suppress citizen petitioning. This has led to systematic abuses. Local Chinese authorities resort to an extensive network of illegal "black" jails, forcible psychiatric detentions, and hired thugs (or "retrievers") to prevent petitioners from reaching higher authorities. Such practices have become increasingly common in recent years as central government authorities have strengthened pressure on local officials to maintain social stability and prevent instances of citizen petitioning.<sup>32</sup>

Since 1949, the People's Republic of China has recognized a high degree of equality between men and women with regard to civil and political rights. Women enjoy equal voting rights with men. Party policy and state law guarantee designated percentages of women in leadership positions.<sup>33</sup> As of 2009, 21.3 percent of representatives in China's national legislature were female, lower than many European countries, but higher than Japan, the United States, and many other developing countries.<sup>34</sup>

Despite significant official efforts to combat prevailing social biases, Chinese women continue to experience gender discrimination in the workplace and domestic violence at home,

particularly in rural China. Sexual harassment, gender discrimination, and domestic violence are all barred under the amended 2005 Law on the Protection of Women's Rights and Interests. However, relevant definitions and avenues of recourse remain unclear, limiting the effectiveness of these legal provisions. Party-dominated mass organizations, such as the All-China Women's Federation, have sponsored legislative proposals to clarify these ambiguities and better protect women's rights.

Sex-selective abortion, although banned under Chinese law, is a serious social problem. According to a 2010 Chinese Academy of Social Sciences study, there are currently 123 male children aged 0-4 years old for every 100 females, well in excess of global averages of 103-105 males per 100 females.<sup>35</sup> Multiple factors are responsible: prevailing cultural norms (particularly in rural China) and economic pressures favoring boys; the introduction of commercial ultrasound technology since the 1980s, which has enabled parents to determine the sex of their child before birth, in violation of Chinese law; and state population control policies. Scholars identify skewed sex ratios as a major factor fueling social problems such as prostitution and human trafficking.

Chinese authorities have stated that they do not intend to abandon official population planning policies in the near future. These generally limit urban residents to a single child, and rural residents to two, if the first is female.<sup>36</sup> Some limited reforms have been undertaken, including loosening restrictions for some urban couples who are themselves single children, and strengthening financial assistance programs for rural families that comply with official policies.<sup>37</sup>

Nonetheless, official population policies continue to be enforced by heavy fines and loss of state jobs for those who violate birth quotas. Driven by top-down quotas and incentives, local authorities in some areas enforce population policies through forced sterilizations and abortions. Activists who challenge such abuses can encounter severe repression by officials. For example, authorities imprisoned Shandong civil rights activist Chen Guangcheng from 2006 to 2010 for his efforts to challenge abusive local birth control practices, and have subjected him and his wife under house arrest since his release from jail.

State law theoretically guarantees China's 55 recognized ethnic minority groups (roughly 9 percent of the population) a range of political, educational, religious, cultural, and linguistic rights. But official efforts to promote national unity under party control undermine or negate these provisions in practice. For example, the Chinese constitution establishes a system of nominally autonomous ethnic administrative areas, with the head of the government drawn from the relevant ethnic group. Real power in these regions, however, is vested in the overwhelmingly Han party administration. Actual autonomy remains extremely limited.

Minority groups that do not challenge official controls enjoy somewhat more space to exercise their lawful rights. This is particularly the case with smaller or more highly assimilated minorities in southwestern China, such as the Bai, Yi, and Zhuang. In contrast, authorities pursue extremely harsh policies with regard to those ethnic minorities viewed as resisting state controls over their religious and cultural expression, particularly the Buddhist Tibetans and Muslim Uighurs, whose autonomous areas make up much of western China. Chinese authorities have tightened these controls in recent years. Starting in 2005, party authorities in ethnic Tibetan areas stepped up a tough patriotic education campaign aimed at forcing monks and nuns to denounce the Dalai Lama, the exiled spiritual head of Tibetan Buddhism.

State controls, coupled with economic disparities and massive Han in-migration, have generated festering ethnic tensions in western China that exploded in both Tibetan areas (2008) and in Xinjiang (2009). Each experienced the outbreak of peaceful citizen demonstrations as well as violence directed at Han residents. Ethnic riots in Urumqi in July 2009 killed hundreds of residents, both Han and Uighur. In response, Chinese authorities mounted severe crackdowns in both Xinjiang and Tibetan areas.

Human rights conditions in both Xinjiang and in Tibetan areas sharply deteriorated in the wake of these crackdowns. Authorities deployed large numbers of security forces, cut off communications links with the outside world for extended periods of time, and detained or arrested thousands of residents. Officials invoked state security laws, among other provisions, to prosecute both violent rioters as well as peaceful political demonstrators.

Despite the popular resentment these episodes revealed, Chinese authorities reject the need to address the political controls that fuel ethnic discontent. They have instead strengthened their security measures and ideological controls, including revitalizing patriotic education campaigns for Tibetan monks following the 2008 unrest. Viewing pervasive economic underdevelopment as the root of current problems, officials have also announced large-scale development programs for both Xinjiang and Tibetan autonomous areas in recent years.<sup>38</sup> These include projects to raze and redevelop the "old city" section of Kashgar, and to expedite the forcible resettlement of hundreds of thousands of Tibetan nomads to urban areas.

With respect to other marginalized groups, Chinese officials have experimented with a degree of cautious liberalization. In April 2010, national authorities lifted China's two-decade travel ban on HIV-positive visitors.<sup>39</sup> Disability activists are carefully experimenting with new legal challenges to employment practices that discriminate based on an individual's HIV or hepatitis-B status. Shanghai witnessed its first organized gay pride event in 2009, following the decriminalization of sodomy in 1997 and the Chinese Psychiatric Association's 2001 determination that homosexuality was not a mental illness.<sup>40</sup>

Nonetheless, limitations still exist. Authorities remain sensitive to organized political activity or direct criticism of core state controls. In the run-up to the 2009 pride festival, Shanghai police cautioned businesses against allowing public gatherings to watch film screenings.<sup>41</sup> Disability rights groups remain under surveillance. Noted AIDS activist Hu Jia is currently serving a three-and-a-half-year prison sentence for subversion after publicly criticizing China's human rights record.

Chinese migrants and rural residents continue to face significant discrimination based on their household registration (*hukou*) status. Established in the 1950s, the *hukou* system originally served Maoist goals of population control and state economic planning, classifying citizens as urban or rural, agricultural or nonagricultural. Post-1978 economic liberalization has eroded many restrictions originally tied to *hukou* status, such as the ability to travel. But *hukou* status remains tightly linked to a range of rights and privileges, particularly urban social benefits. Most rural migrants to Chinese cities are unable to obtain equal public services such as healthcare and schooling for their children. Because residency status is hereditary, with limited channels to change one's status, this disparity risks hardening into a permanent divide between migrant and urban youth.<sup>42</sup>

Chinese authorities have undertaken some limited steps to address this discrimination. A 2009 tort law allows the lives of urban and rural residents to be valued equally in calculating death compensation for major accidents. Under amended 2010 election laws, rural and urban residents are to be counted equally in determining legislative representation. And assorted local experiments have enabled a thin "upper crust" of privileged rural migrants to obtain full-blown urban residency status in major Chinese cities.

Nonetheless, these reforms remain highly constrained in practice. In many localities, strict economic conditions for obtaining urban residency (such as actually purchasing a house) exclude low-income rural migrants living in rental apartments. A number of national and local reforms have ground to a halt over thorny funding issues. Local governments resist shouldering the burden for extending education and health benefits to migrants. Many urban residents, meanwhile, oppose cuts to their privileged levels of access to public services.

Official Chinese policies toward religion have softened since the Maoist era, when state authorities attempted to eradicate religious faith entirely and enforce mass adherence to atheism. Since the late 1970s, authorities have permitted churches, mosques, and temples to reopen under careful state controls. The last three decades have witnessed a revival among believers in the five officially recognized religions – Buddhism, Catholicism, Islam, Protestantism, and Taoism – and a range of folk religions and spiritual movements.

Chinese authorities, however, maintain strict controls over religious groups and their internal activities. Party-controlled "patriotic religious associations" lead each of the five recognized religions. These control selection of religious leaders, publication of religious texts, and interpretation of religious doctrine. This permits Chinese officials to harmonize the tenets and activities of recognized religious organizations with state policy. Party insistence on atheism within its ranks also excludes many believers from high government office.

Religious groups that are not registered with state authorities, or that reject Party leadership, risk abuse and imprisonment. Official demands that Catholics reject the authority of the Holy See in appointing bishops (and accept the leadership of the Catholic Patriotic Association) have fueled longstanding conflicts with lay believers, given rise to an underground Catholic church, and led to detentions of clergy who resist state policy. In recent years Chinese officials have established a degree of discreet coordination with papal representatives to jointly recognize some bishop ordinations.

Chinese believers who reject state controls and choose to worship alone, within the confines of their own homes, are generally left alone. In contrast, unregistered groups of believers who meet privately for worship services, such as Protestant "house churches," risk government harassment and periodic crackdowns. In September 2009, for example, Shanxi public security officials mounted a violent raid on the unregistered Linfen-Fushan church in a campaign to suppress "illegal buildings." Over 100 members were wounded, church buildings leveled, and five pastors sentenced to lengthy prison terms.<sup>43</sup>

Chinese authorities take particularly harsh measures to control (or eliminate) organized beliefs that they view as challenging their political control. State controls over the religious practices of Tibetan Buddhists and Uighur Muslims have tightened in recent years. Authorities continue their severe decade-long persecution of the Falun Gong spiritual movement, which was initiated following a peaceful protest in 1999 by practitioners outside central CCP headquarters. Official repression of Falun Gong has been characterized by large-scale arrests and widespread torture, psychiatric confinement, and forced conversions of practitioners under the supervision of an extralegal, party-led agency.

Worker associations and other civil society groups are subject to extensive state controls. The party-run All-China Federation of Trade Unions (ACFTU) is the only authorized union, and outside organizing is banned. Rapid urbanization has raised fears among party leaders that an independent labor movement might develop among the ranks of migrant workers, particularly in foreign firms lacking ACFTU branches. Indeed, in the spring and summer of 2010, large strikes broke out at a range of enterprises in China, mostly foreign-owned, by migrant workers seeking higher wages and better working conditions. Chinese authorities are adapting their controls in



response. Since 2006, they have pressed foreign firms that have traditionally resisted unionization (such as Walmart) to establish ACFTU branches, in order to preempt the formation of wildcat unions and diminish the likelihood of protests.

Chinese authorities severely restrict public demonstrations and protests, particularly at symbolic locations such as Tiananmen Square or during important events, such as central CCP meetings. Despite the announcement by public security authorities that they would permit demonstrations in designated zones during the 2008 Olympics, not a single application was authorized.<sup>44</sup> Notwithstanding state controls, China continues to experience tens of thousands of protests each year. These range from small demonstrations of a few homeowners with shared grievances to massive demonstrations of thousands of individuals protesting local corruption, environmental pollution, or land seizures, and from entirely peaceful protests to violent riots that result in the burning of government buildings and vehicles. Many protest organizers receive long prison sentences. Some peaceful protests are suppressed with violent force, while authorities respond to others with tactical concessions. In response to the 2010 wave of strikes, for example, Chinese authorities applied pressure on foreign firms to raise worker salaries in order to quiet labor unrest.

#### RULE OF LAW

Party authorities control the work of Chinese legal institutions. At each level of government, party political-legal committees supervise local courts, prosecutors, and police. This facilitates political and extralegal influences. However, it conflicts with reforms pursued by Chinese authorities since the 1980s that emphasize the need for state institutions to conduct their daily operations in accordance with legal norms.<sup>45</sup>

Post-1978 China experienced significant legal reforms. Civil and criminal codes were adopted; law schools reopened. Students began to study formal law rather than party dogma. Consistent with these reforms, Chinese authorities also took steps to strengthen judicial professionalism. The 1995 Judges Law made some degree of professional legal knowledge a prerequisite to serve as a judge.<sup>46</sup> Amendments in 2001 added the requirement of a university degree (although not necessarily in law).<sup>47</sup> In addition, officials enacted procedural and legislative reforms that encouraged citizens to resort to courts and litigation (rather than Maoist meditation institutions) to resolve grievances against one another or the state. Similarly, authorities recognized a somewhat more independent role for the bar. The 1996 Lawyers Law redefined lawyers' role from "state legal workers" to "legal practitioners providing legal services" and explicitly recognized nonstate law firms.<sup>48</sup>

By 1997, central party authorities had made "rule by law" (*yifa zhiguo*) a core slogan. Naturally, they had no intention of calling party power into question. Rather, they perceived law as an effective tool to strengthen party governance of China and improve resolution of citizen grievances.

However, CCP authorities now perceive these reforms to have had a range of negative side effects. Some concerns are practical. Since Chinese courts remain institutionally weak actors, enforcement of administrative and civil decisions remains very problematic. Moreover, heavy emphasis on courts and litigation to resolve citizen grievances has created significant disconnects with rural realities. As recently as 2005, one out of eight Chinese counties lacked a single lawyer.

Other central party concerns are explicitly political. Legal reforms unleashed a range of pressures for greater institutional change. Chinese courts developed as a forum for citizens and activists to bring a range of politically charged grievances against state actors and entrenched elites. A cadre of public interest lawyers emerged, adept at using media coverage and legal challenges to promote change. In 2003, they managed to prompt national authorities to abolish the custody and repatriation detention system, following a scandal generated by the death of a migrant, Sun Zhigang, at the hands of Guangzhou authorities. Reforms resonated within official ranks as well. In 2001, the Supreme People's Court (SPC) suggested that the previously nonjusticiable rights in the Chinese constitution might actually have legal weight, authorizing a lower court to apply constitutional provisions in a particular case.<sup>49</sup>

Such developments have frightened central party authorities and prompted a backlash against earlier legal reforms. In 2008, Chinese authorities appointed Wang Shengjun, a former public security chief and CCP political-legal affairs official, as the new SPC president. He has steered the judiciary in a more conservative direction. As part of this shift, Chinese leaders have launched political campaigns to reassert political and ideological control over legal institutions.

The "Socialist Rule-of-Law" (2006) and "Three Supremes" (2008) campaigns have reemphasized to judges and other officials the supremacy of party doctrine and the need to resist "Western" rule of law concepts. Authorities are similarly reasserting control over the bar. Official harassment of public interest lawyers has increased. Some have had their licenses revoked, while others have been subjected to surveillance, kidnapping, torture, and imprisonment. In April 2009, justice officials launched a new campaign emphasizing the role of lawyers as "socialist legal workers," and cautioning them to "consciously resist the plots of Western enemy forces."<sup>50</sup> Chinese authorities are also making significant efforts to reinvigorate mediation institutions, and are actively discouraging judges and parties from resorting to courtroom litigation as a means to resolve citizen grievances.

Despite some reform efforts, the Chinese criminal justice system continues to be marked by abuses stemming from authoritarian political controls, weak rule of law norms, and lack of resources. Arrests and trials of political dissidents or spiritual activists are staged, predetermined affairs, carefully controlled by party authorities. Even ordinary criminal trials are characterized by relatively weak protections of the rights of criminal defendants. China's Criminal Procedure Law does allow criminal defendants the right to appoint counsel, except in cases involving state secrets.<sup>51</sup> However, lawyers represent clients in only 30 percent of criminal cases, citing low fees and fear of retaliation as significant factors for avoiding such cases.<sup>52</sup> Defense lawyers experience significant difficulties meeting with their clients and gathering evidence. Police frequently deny lawyers the right (guaranteed under Chinese law) to meet with their clients immediately after interrogation or detention. Officials also often deny defense lawyers access to case files. In addition, 95 percent of witnesses in criminal trials do not appear in court, denying defense attorneys the ability to engage in cross-examination.<sup>53</sup>

Specific legal and bureaucratic practices exacerbate these problems. Salaries and career advancement for Chinese judges and officials are linked to a range of numerical performance targets, including conviction and reversed case ratios. These incentivize officials toward high rates of criminal convictions – 99.3 percent between 1997 and 2005 – and infrequent appellate reversals.<sup>54</sup> Under article 306 of the criminal code, law enforcement authorities have also aggressively brought charges of evidence fabrication against defense lawyers as a means to dissuade them from actively representing their clients' interests.

Chinese authorities have made significant efforts to reform the widespread use of capital punishment following several media scandals involving the execution of wrongfully convicted defendants. In 2007, the SPC reclaimed power of final review over all death penalty sentences in China. Both Chinese and foreign sources reported a decline in executions in the wake of these reforms.<sup>55</sup> In the fall of 2010, Chinese legislators also began consideration of draft legislative proposals that would reduce the numbers of crimes eligible for the death penalty. However, the impact of these reforms is uncertain. Procedures for SPC appellate review of capital punishment remain murky, and death penalty statistics continue to be classified as state secrets, hindering accurate evaluation of trends. Outside observers estimate that Chinese authorities carried out between 5000 and 8000 executions per year between 2005 and 2007, accounting for as many as 90 percent of executions worldwide.<sup>56</sup>

Both the 1949 Communist Revolution and post-1978 reforms deeply mark the substantive legal rights enjoyed by Chinese citizens. Property law provides one example. In keeping with socialist ideals, China has not recognized private ownership of land since the 1950s. Rather, rural land is owned by agricultural collectives, and urban land by the state. Starting in the late 1970s, however, Chinese authorities began to recognize long-term leasehold rights. Further reforms in the 1980s and 1990s formalized these rights, and Chinese farmers currently receive 30-year use rights to the land they farm. This, coupled with state privatization of the entire urban housing stock (but not the underlying land) in the late 1990s, has allowed citizens a degree of economic security and fueled China's massive agricultural and construction booms.

However, land disputes have emerged as a major source of conflict in the last decade. Rapid urban expansion and major projects such as the 2008 Olympics and 2010 Expo have driven local authorities to aggressively seize land and demolish buildings for development projects. But low compensation standards, weak procedural protections, and limited checks on government power have fueled widespread corruption and abuses in many such projects, including the use of thugs to intimidate and evict residents. Numerous citizen protests have erupted as a result. In response, central government officials have called on local authorities to strictly protect citizen rights in seizure proceedings.<sup>57</sup> They have also provided some greater protection (albeit vague and primarily symbolic) to citizen rights through passage of the 2007 Property Law, including the automatic renewal of leasehold rights (upon expiration) for land used for residential purposes.<sup>58</sup> Nonetheless, extensive local government reliance on the sale of land rights to raise revenue has stalled deeper, more substantive reforms.

Consistent with its origins as an arm of the Communist Party, the Chinese military is governed outside the regular state apparatus. The People's Liberation Army reports directly to top party authorities, rather than the State Council, and is governed internally by party political officers and committees. The military is rarely called in to suppress domestic dissent – the 1989 crackdowns in Lhasa and Beijing being notable exceptions. Responsibility for day-to-day policing and surveillance rests largely with the Public Security Bureau, while quelling citizen protests (sometimes violently) falls to paramilitary institutions such as the People's Armed Police or informally recruited local security forces.

#### ANTICORRUPTION AND TRANSPARENCY

Official corruption remains pervasive in China. Concentrated political power in the hands of a few, limited checks on party and government officials, and lack of governmental transparency enable networks of corruption to thrive. China falls in the middle of all countries in terms of perceived corruption, slipping from a rank of 72 in 2007 to 78 in 2010 on Transparency International's Corruption Perceptions Index.

Official corruption has evolved since the 1980s. Early reform-era corruption primarily involved arbitrage of the two-track pricing system, as government agencies took advantage of their access to price-regulated goods and sold them at (higher) market prices. Since the 1990s, however, corruption has involved a wider range of illicit transactions in which officials abuse

their positions for financial gain.<sup>59</sup> Local officials demand kickbacks from real estate magnates to issue development permits. Judges accept bribes from litigants in exchange for favorable decisions. Managers of state-owned enterprises take money to rig government procurement bids.

China has experienced rapid growth in large-scale corruption involving high-level party cadres.<sup>60</sup> Such top-level networks are only taken down in the midst of major political realignments among central party leaders, at which point corruption charges become effective tools for disposing of political rivals. Examples include the arrest, dismissal, and sentencing of the Party secretaries (and mayors) of Beijing (Chen Xitong, in 1995) and Shanghai (Chen Liangyu, in 2006).

In recent years a range of local corruption scandals have gained nationwide attention, including the Shanxi brick kiln "slave labor" (2007), Hebei melamine (2008), and Sichuan schoolhouse (2008) scandals. Such episodes share broad similarities. First, local authorities strike corrupt deals to enrich themselves at the expense of citizen interests. Then, they use political control over local media outlets to shut down public reporting of problems and to blind their own superiors about the extent of problems. Furthermore, they use their sway over the courts to block avenues of legal redress. Problems fester, eventually erupting in a nationwide sensation when bloggers, citizen activists, or independent-leaning journalists manage to break the story in a forum outside the direct control of the local authorities in question.

Such media exposés offer a limited check on local corruption. Central government authorities tolerate some reporting as a way to monitor their own subordinates and provide a vent for social discontent. But significant limits exist. Party authorities squelch reporting on local corruption when it starts to touch on broader political questions or generates widespread discontent with core central government policies (as opposed to individual local officials). One notable example is suppression of news regarding the extent to which shoddy construction practices resulted in the deaths of thousands of schoolchildren during the 2008 Sichuan earthquake. Reporting on corruption involving top elites or their families is also strictly barred.<sup>61</sup>

Threat of prosecution under vaguely worded state secrets laws deters investigations by bloggers and journalists. Local authorities often retaliate against individuals who raise the curtain on corrupt dealings, leading some whistleblowers to flee their hometowns and move overseas or to Beijing.

Chinese authorities rely on internal party discipline inspection committees (DICs) to monitor officials and combat corruption within the ranks of party cadres, and on institutions such as the Supreme People's Procuratorate, the Ministry of Supervision, and (since 2007) the National Bureau of Corruption Prevention to fight corruption inside the government. Party DICs are equipped with a range of extralegal powers to detain and investigate party officials. At the conclusion of the internal party investigation, party authorities have the option of handing over suspects for prosecution by state authorities according to the criminal law. Periodic efforts have been made to impose greater asset disclosure requirements on lower-level officials in an effort to curb corruption. In 2010, for example, central authorities mandated that officials report to higher authorities – but not publicly disclose – their outside income, family investments, and spouse's employment.<sup>62</sup>

Such efforts at internal party self-supervision face serious institutional constraints. Party DICs are commonly chaired by deputy party secretaries on the local CCP committee. This creates significant obstacles in terms of investigating incidents of corruption linked to other party committee members, or their friends and associates. Excessive concentration of political power and the absence of bottom-up checks have led to the spread of corruption within Chinese anticorruption institutions themselves. In November 2010, authorities sentenced Kang Rixin, former general manager (and party head) of the state-owned China National Nuclear Company, and a member of both the national party DIC and the Central Committee, to life in prison for accepting 6.6 million yuan (US\$1 million) in bribes.<sup>63</sup>

Chinese officials periodically resort to anticorruption campaigns. These are characterized by intense, highly politicized bursts of aggressive enforcement by state and party authorities. One such campaign rocked the southwestern metropolis of Chongqing in 2009-10, resulting in one of the largest anti-gang trials ever. Over 9000 suspects were investigated, 90 officials prosecuted, and the former director of the Chongqing judicial bureau was executed for receiving over 12 million yuan (US\$1.76 million) in bribes as part of a complex web of corruption to sell government positions and provide protection to criminal syndicates.<sup>64</sup> Observers widely viewed the campaign as motivated by Chongqing party secretary Bo Xilai's efforts to strike a populist image in a bid for a seat on the Politburo Standing Committee in 2012. Chinese lawyers and academics have expressed concern regarding the impact of the campaign on rule of law norms, particularly the prison sentence for evidence fabrication meted out to one of the defense lawyers, Li Zhuang, in a trial marked by numerous irregularities.<sup>65</sup>

Chinese authorities have attempted to build some institutions to increase government transparency. They have issued national Open Government Information (OGI) Regulations, which entered into effect in May 2008. These emphasize that local authorities should make public a range of government information, including local budgets, land use plans, and administrative rules and regulations. Under the OGI regulations, citizens may request government information that has not been disclosed, and may seek administrative or judicial review if governments refuse. Broad exceptions exist for issues affecting state secrets or public security.<sup>66</sup>

Thus far, the results are mixed. Chinese authorities have launched efforts throughout the bureaucracy to stress the need to comply with the new regulations. Public interest lawyers have actively attempted to use them in order to push authorities to release detailed information regarding official budgets, use of highway tolls, and government stimulus plans.<sup>67</sup> In 2010, Guangdong authorities announced that they would make the provincial budget public.<sup>68</sup> Actual implementation of OGI reforms remains uneven, however. Shanghai authorities complied in full with 79.3 percent of initial requests filed in 2004 under the city's municipal OGI regulations (which served as a partial template for the subsequent national regulations), declining to 51.5 percent in 2009. Similar declines occurred with respect to administrative reconsideration. In 2004, 45 percent of reconsideration petitions filed with Shanghai authorities resulted in orders that authorities correct their actions, falling to 8 percent in 2008. Out of some 400 court cases brought under the relevant Shanghai OGI regulations between 2004 and 2008, the government lost just once.<sup>69</sup> Significant variation in governmental transparency also exists between provinces and localities.<sup>70</sup>

## RECOMMENDATIONS

- Adopt meaningful bottom-up checks on state power to check abuse of power by local officials, curb corruption, and address social unrest. Examples include: removing restrictions on the media and internet, relaxing registration requirements for civil society organizations, and expanding citizen political participation in the selection of officials.
- Clarify or repeal vague state security and state secrets laws used to imprison activists, citizens, and lawyers attempting to peacefully address popular grievances and promote gradual political reform in China, and halt extralegal detentions and disappearances of such activists.
- Reform the reeducation through labor system to conform with international law, abolishing forced labor practices, releasing spiritual and political dissidents, and allowing detainees an opportunity to contest accusations of guilt before an independent adjudicatory body.
- Create mechanisms for Chinese citizens to enforce the rights guaranteed to them under China's own constitution, including freedom of association, religion, and speech.
- Curb the trend toward increased politicization of the Chinese judiciary, and ensure that court reforms, such as the new emphasis on mediation, are implemented in a manner that respond to citizen needs rather than repress legitimate grievances.
- Experiment with creating independent oversight and anti-corruption institutions that have proven successful at promoting clean governance in other jurisdictions, such as Hong Kong's Independent Commission Against Corruption and Singapore's Public Service Commission.

<sup>1</sup> Several notes regarding sources are in order. Since this chapter is written for a general audience, it cites easily accessible English-language sources to the greatest extent possible. Extensive Chinese-language sources regarding many of the developments discussed here are available in this author's academic writings, and in sources such as the annual reports by the Congressional-Executive Commission on China.

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