HUMAN RIGHTS IN CHINA HUMAN RIGHTS WATCH/ASIA

April 1997 Vol. 9, No. 4 (C)

CHINA

Whose Security?
"State Security" in China's New Criminal Code

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I. SUMMARY

National security has long been invoked by authoritarian governments around the world as a pretext for suppressing freedom of expression and freedom of association. The "crime" for which dissenters are punished can have different names in different countries: subversion, sedition, terrorism, sowing hatred, or, as in China until March 1997, "counterrevolution." While all governments have laws designed to protect the nation against threats from within and without, authoritarian governments tend to define national security crimes in overbroad terms, making no distinction between violent and nonviolent acts, so that peaceful critics and political opponents can be detained.

In China, the National People's Congress (NPC) took the historic step at its annual session in March of eliminating crimes of "counterrevolution" from the criminal code, a step which at first glance seemed to indicate movement toward greater respect for the rule of law. After all, from the early years of the People's Republic of China through the aftermath of the Tiananmen Square crackdown in June 1989, most victims of political purges were labeled "counterrevolutionaries," and thus the removal of the crime might have been a signal that the legislature intended to end the legal persecution of the government's political and religious opponents. But in fact, China has merely replaced the term "counterrevolution" with the equally elastic notion of "endangering state security" and has, in the process, actually broadened the capacity of the state to suppress dissent.

The reasons for the change were political. They include the fact that the existence of crimes of counterrevolution was proving to be an international liability, as it was an easy target for outside condemnation and a hindrance to cooperation on legal issues more generally. There were also historical connotations of the term that were no longer applicable ― China's period of revolution is now deemed officially to have come to an end ― and the imminent reversion of Hong Kong to Chinese control created special problems.

Whatever the reasons, there are several disturbing aspects of the security provisions of the newly revised criminal code. They include:

- *punishment of contact with individuals and organizations outside China*:

In the revised code, "colluding" with "institutions, organizations, or individuals" outside China to harm state security is seen as essentially the same as "colluding" with foreign powers, while giving information to any outsider is seen as analogous as obtaining or providing state secrets for an "enemy. " Actions which involve some foreign connection are subject to harsher punishments than persons that are purely domestic, and those inside and outside China who "subsidize" acts which "endanger state security" may be prosecuted and imprisoned.

- *highlighting crimes of separatism*

"Splitting the nation or sabotaging national unity" has become a whole separate article in the new law, emphasizing the authorities' battle against separatist forces in places like Tibet, Xinjiang and Inner Mongolia.

- *tightening limits on freedom of expression*

The scope of what can be considered subversive, seditious or secessionist expression appears even broader than in the 1979 criminal code.

Taken together, the new security provisions will facilitate the labeling of all domestic critics as tools of "hostile foreign forces" and could play well with an increasingly nationalist domestic audience, ready to see dissidents and restive ethnic minorities as part of the "conspiracy" to hold China back from its deserved great power status. Along with the 1993 State Security Law and the 1988 PRC Law on the Preservation of State Secrets, they create a web in which any person expressing views contrary to those promoted by the Chinese state, or associating with others for a purpose not sanctioned by the government, may be caught.[1]

[1]See Section V which examines how these laws and their implementation regulations laid the groundwork for the present changes. Henceforth, the PRC Law on the Preservation of State Secrets will be referred to as the "State Secrets Law."

One of the most telling signs that the abolition of counterrevolution as a category of crime does not mean a shift in the government's attitude towards dissent is the fact that the authorities do not intend to release any of the thousands of "counterrevolutionaries" who remain in prison.[2] "The punishment meted out for crimes of counterrevolution in the past will remain valid and cannot be altered," said Wang Hanbin, NPC Standing Committee vice chairman, when introducing the new criminal code.[3] Thus the revised law will merely continue the Chinese Communist Party's (CCP) long-standing practice of persecuting its critics by adding a new category of prisoner — "state security offenders" — to those already serving time for daring to exercise their rights.

The change is the culmination of a long-term effort, which gathered steam in the wake of the crackdown on the 1989 democracy movement, to recast the suppression of dissent as "protecting national security." On a practical level, the revisions were presaged by a distinct linguistic shift away from the term "counterrevolution" in the last year and a half or so. For example, the "state security" justification was a major feature of the prosecution arguments in the cases of Wei Jingsheng and Wang Dan, sentenced for "conspiracy to overthrow the government" to fourteen years and eleven years respectively. It was also used to explain why Li Hai's attempt to collect information about people sentenced in connection with the Tiananmen Square crackdown became "espionage." Li Hai was given a nine-year term in December 1996 for "gathering state secrets." [4]

[2] For a list of some 1,200 imprisoned counterrevolutionaries, see Human Rights Watch/Asia, *Detained in China and Tibet: A Directory of Political and Religious Prisoners* (New York: Human Rights Watch, 1994).

[3] See Wang Hanbin's speech introducing the new law on March 6, 1997, to the Fifth Session of the Eighth National People's Congress. The new criminal code will come into force on October 1, 1997.

[4] For more detail on these cases, see Appendix A. For analysis of the state security rationale in some of these trials as well as relevant documents from them, see "China: Labor Rights Activists on Trial in Shenzhen," Human Rights Watch/Asia, November 13, 1996; "China: Slamming the Door on Dissent — Wang Dan's Trial and the New 'State Security' Era," Human Rights Watch/Asia, October 29, 1996; and "A Travesty of Justice: The Show Trial of Wei Jingsheng," Human Rights in China, March 4, 1996.

As a member of the United Nations, China is bound to uphold the principles contained in the Universal Declaration of Human Rights, which sets forth, among other rights, the rights of free expression, association and assembly without qualification.[5] China has yet to sign the two basic human rights treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which together with the Universal Declaration comprise what is known as the "International Bill of Rights." The rights set forth in these covenants, by virtue of their overwhelming acceptance by the nations of the world, have entered the realm of customary norms of international law, binding on all states. Despite the fact that it is not yet a party to the covenants, China will soon be specifically obliged to respect their provisions in part of its territory. Beginning in July 1997, China will assume sovereign power over Hong Kong, and by the terms of a bilateral treaty with Britain, the current colonial power, that preserves the territory's way of life and economic and social characteristics for fifty more years, it will be obliged to continue the protections of the two covenants which apply there now because of Britain's status as a party to both.[6]

The International Covenant on Civil and Political Rights provides for the rights of free expression, assembly and association, but qualifies them by allowing restrictions in the interest of protecting national security. Such restrictions, however, are only valid if they are prescribed by law and "necessary."[7] The latter requirement means that the restriction must be proportional to its purpose in severity and intensity and the least restrictive means of achieving that purpose. Thus interference with a right must be interpreted narrowly in cases of doubt and not presumed to be the rule. In the case of freedom of association and assembly, a restriction must be "necessary in a democratic society," that is it must not only meet the above requirements but must also be respectful of the democratic values of pluralism, tolerance, broad-mindedness and popular participation in the political decision-making process. The protection of national security has been interpreted narrowly as well, to apply only to those cases where there is a serious political or military threat to the entire nation, as, for example, disclosure of military secrets in time of war.[8] A threat to national security is not the same as a threat to any given government of the nation, and mere criticism of a governing party or its policies should not be restricted in the name of national security.[9]

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[5] Article 19 provides that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 20 states: "1. Everyone has the right to freedom of peaceful assembly and association. 2. No one may be compelled to belong to an association."

[6] Under the 1984 Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, China is bound to preserve the territory's current economic, social and institutional system for fifty years after the hand over, including continuing the protections of human rights under the two covenants, which presently apply to Hong Kong through the United Kingdom's status as a state party.

[7] Article 19 provides, that: "2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2. Of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary.... (b) For the protection of national security...." Article 21 provides: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security...." Article 22 states: "1. Everyone shall have the right to freedom of association with others.... 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security...."

[8] See *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, by Manfred Nowak, (N.P. Engel, Kehl, Strasbourg, Arlington, 1993).

[9] *The Article 19 Freedom of Expression Manual: International and Comparative Law, Standards and Procedures*, Article 19 (Article 19 and the Bath Press, Avon 1993), cites cases where mere membership in separatist groups was found not to be a sufficient basis for suppressing expression.

The definition of national security in the context of permissible restrictions on freedom of information and expression was the subject of intensive study in 1995 by international conference of legal scholars and experts in Johannesburg. Their conclusions, known as the Johannesburg Principles, include that restrictions in the name of national security should be narrowly drawn, be the least restrictive means necessary for this end and have "the genuine purpose and demonstrable effect of protecting a legitimate national security interest," in order to meet with standards for good practice in this area.[10] Furthermore, "The peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties."[11] China's legal formulations on "state security" do not meet any of these standards.

This report from Human Rights in China and Human Rights Watch/Asia provides a detailed analysis of the provisions of China's new law relating to national security concerns, pointing out the changes and additions in the revisions as compared with the 1979 version; gives a brief overview of two other key security laws, the State Security Law and the State Secrets Law, which further elucidate the notion of "endangering state security"; assesses the past use of the crime of "counterrevolution" and points out how the changes in the law are affecting how the state treats dissent. The report also contains several appendices comprising the full texts of some of the laws mentioned in the report and a list of individuals sentenced in the last two years to prison or reeducation through labor for political "crimes."

II. RECOMMENDATIONS

To address the concerns raised in this report, Human Rights in China and Human Rights Watch/Asia urge China's National People's Congress and the Chinese government to:

1. Begin immediately drafting further amendments to the criminal code to bring it into line with international human rights standards, specifically the narrow interpretation of national security interests under the International Covenant on Civil and Political Rights developed through national jurisprudence and expert analyses such as the Johannesburg Principles. The amendments should:

- Allow the greatest possible degree of freedom of expression and information, recognizing that people have a right to express their opinions and to gain information about all facets of the operation of their government, even when these relate to national security concerns.

- Ensure that legitimate national security interests are defined narrowly as those protecting the country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the threat or use of force.

- Ensure that any restrictions on the rights of expression, receiving information, assembly or association on the grounds of protecting national security are unambiguously worded, that a limited and narrow definition of national security is employed and that such measures are limited to the least restrictive means possible in all cases.

[10] Johannesburg Principles on National Security, Freedom of Expression and Access to Information drafted by an international team of human rights experts, including legal scholars, U.N. rights specialists and diplomats, at a conference in Johannesburg, South Africa, in 1995 convened by the London-based NGO, Article 19. The full text is available in *The New World Order and Human Rights in the Post-Cold War Era: National Security vs. Human* Security, papers from the International Conference on National Security Law in the Asia Pacific, November 1995 (Korea Human Rights Network, 1996). The principles define legitimate national security interests as: "protecting a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the threat or use of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government." Reasons for restrictions the principles find entirely illegitimate are "protecting the government from embarrassment, or exposure of wrongdoing, or to entrench a particular ideology, or to conceal information about the functioning of its public institutions, or to suppress industrial action."

[11] The principles further list specific types of expression which should be protected, including criticizing or insulting the state and its symbols, advocating nonviolent change of government or government policies and communicating human rights information. They also state that any disclosure of information should not be punished unless demonstrable harm was caused by its disclosure.

- Ensure that any restrictions on these basic rights are open to challenge by individuals and bodies affected before an independent court, and that the government bears the burden of showing that the restrictions have the genuine purpose and demonstrable effect of protecting national security, and that they are the least restrictive means of doing so.

2. Repeal the 1993 State Security Law, which is basically incompatible with human rights standards and significantly amend the State Secrets Law so as to restrict the scope of classified material to what is strictly necessary, as defined by the Johannesburg Principles. Limit the powers of classification to agencies which deal with such material.

3. Draft a law granting Chinese citizens access to information about their government, so they may effectively monitor and supervise its operations, in accordance with provisions of China's constitution.

4. Order immediate and unconditional release of all those convicted solely under Articles 98, 99 and 102 of the 1979 criminal code.

5. Establish a Commission on Review of Counterrevolutionary Offenders to review, in a transparent process, all convictions under counterrevolution statutes, to make public all documents related to trials of counterrevolutionaries and to order release of all those charged with crimes for peacefully exercising their basic rights and freedoms under these statutes.

6. Allow monitoring of the judicial process, including attendance at trials, by independent domestic and international human rights monitors.

Human Rights in China and Human Rights Watch/Asia also call on the international community to:

1. Move to have either the U.N. Commission on Human Rights or the Subcommission on the Prevention of Discrimination and the Protection of Minorities appoint a Special Rapporteur on National Security Laws. One of his or her first tasks should be to examine China's laws relating to national security and their impact.

2. Use all opportunities to impress on China that "legal reform" must entail improved respect for fundamental rights to freedom of expression and association and ensure that bilateral aid for legal reform does not in any way support measures which reduce or restrict those freedoms.

3. Raise the issue of China's use of state security as a rationale for suppressing dissent and the above recommendations to the National People's Congress and the Chinese government, at all appropriate U.N. fora, including the Commission on Human Rights, as well as in other multilateral events and in bilateral meetings. In particular these issues should be raised:

- In all bilateral contacts of European Union member states with China, especially visits of leaders to China such as French President Jacques Chirac's upcoming May trip, and during the European Parliament's debate of EU-China policy set for late April.

- At all summit meetings in 1997, including President Clinton's planned summit meeting with Chinese President Jiang Zemin and reciprocal invitations between Japan and Beijing to exchange high-level visits this year and next year. Concrete steps to implement such reforms, as well as releases of significant numbers of counterrevolutionary prisoners, should be included among the necessary preconditions for summit meetings.

4. The leaders of the G-7 industrial nations, during their summit meeting in Denver, Colorado, on June 22, 1997, should agree upon a multilateral agenda for promoting human rights in China, as well as benchmarks for the protection of civil liberties and democratic institutions in Hong Kong after its reversion to Chinese sovereignty on July 1, 1997. Along with the above recommendations, crucial items on such a multilateral agenda would also include the

need for access to Tibet and Xinjiang by private and U.N. human rights monitors, access to prisoners by international humanitarian agencies, ratification of human rights treaties and other measures.

III. BACKGROUND TO THE CRIMINAL CODE REVISIONS

Discussion about reforming the criminal code began almost immediately after its promulgation in 1979. Although the legal community in China supported the enactment of the code as an important step towards the revival of a legal system which had been all but suspended since the 1957 Anti-Rightist Movement, there had been hopes that it would incorporate more protections for human rights. Many legal scholars proposed eliminating crimes of counterrevolution from the statute book then, especially as they had been among its major victims during the waves of political campaigns the country had undergone. Some argued that the term "counterrevolution" was too ambiguous and undefined, while others criticized it for being politically motivated and outmoded. Senior officials in charge of legal matters in the central government occasionally indicated some support for such changes.

However, such reforms encountered constant resistance from conservative factions within the CCP, especially from those working on the front lines of the "dictatorship of the proletariat," in places like the Public Security Bureau and the prison system. During the 1980s, reform-oriented leaders like then CCP General Secretary Hu Yaobang[12] tried to strike a balance between the conservatives and those who argued for change. In January 1979, Hu gave a speech in which he announced the repeal of what were known the "Six Principles of Public Security" (*gong'an liutiao*), under which any criticism of leaders was defined as a criminal offense.[13] During the Cultural Revolution, these provisions had been used to imprison people for even private grumbling about any aspect of state or local policy. But Hu could go only so far: he still maintained that serious criticism of the nation's top leaders should be considered a crime.

The CCP's Central Political-Legal Commission in 1981 tried to clarify Hu's statement — which was considered by many in power to have limited the state's power too much — emphasizing that it was a serious misunderstanding to argue, as some had following Hu's speech, that "speech cannot constitute a crime" just because the criminal code did not make a clear statement on the 1979 issue. The criminal code did cover speech, since speech was "an act" which could violate provisions covering such crimes as counterrevolution, defamation, instigation, false accusation and giving false proofs.[14] Furthermore, several authoritative Chinese law journals stated that speech should be considered an act because it involved "moving the lips."

[12] Hu was purged in early 1987 in a campaign against "Bourgeois Liberalization." Demonstrations in support of his more "liberal" policies after his sudden death in April 1989 provided the first sparks for the 1989 protest movement.

[13] These were issued by the Ministry of Public Security during the Cultural Revolution in 1967. Their main purpose was to make any criticism of China's leaders a crime; this was labeled the "crime of maliciously attacking" (*e'du gongji zui*) the leaders. Under this charge, thousands of people were sentenced and jailed. It was formally abolished in 1979.

[14] "Opinion on the Question of Whether Viciously Attacking or Slandering Central Leading Comrades Constitutes a Crime," from *Handbook of Laws and Regulations for Work on Reporting [by the Public on Official Wrongdoing] and Appeals* (*Jubao Shensu Gongzuo Fagui Shouce*), published by Supreme People's Procuracy Complaints and Appeals Bureau, 1990, translated by Donald C. Clarke.

By 1988 efforts to reform the counterrevolution section of the criminal code had progressed to the point where that year's revised draft of the law actually incorporated the replacement of counterrevolution with "endangering state security."[15] The last public advocacy of the proposed reforms prior to the 1989 crackdown occurred in late May of that year at a legal conference in Beijing, but thereafter such ideas were swept away in the political storm as the country's security forces carried out a nationwide hunt for all those responsible for the "counterrevolutionary rebellion" that the leadership claimed had taken place. A few brave souls still called for the process to continue at the annual meeting of the China Criminal Law Society in Shanghai in late 1989, but their voices were quickly silenced.

In mid-1990, the debate publicly resurfaced in the legal press, but this time calls to discard the term "counterrevolution" were no longer linked with any aspiration toward legal liberalism or greater tolerance, as they had occasionally been before. On the contrary, virtually all contributors to the debate stressed that renaming such offenses as "crimes of endangering state security" not only would entail no substantive change at all in China's law enforcement practices but would even increase the authorities' effectiveness in cracking down on precisely the same targets as before. As one Chinese jurist explained:

> By altering the name of this legal weapon [the statutes on counterrevolution], we will be changing neither its basic nature, its tasks nor its combat effectiveness; still less will we be discarding it. All that will be involved is the adoption, in line with today's changed circumstances, of a new and more appropriate designation for the weapon.[16]

According to another commentator: "The proposal to redesignate counterrevolutionary offenses as crimes of endangering state security means nothing more than a change of name; in no way does it imply the 'deletion' or 'abolition' of those offenses."[17] Certainly, whatever other beneficial results may have been intended from this change, the release of the thousands of sentenced counterrevolutionaries appears never to have been among them.

What, then, were the reasons that impelled China's leadership finally to discard the "legal weapon" in question? The same series of arguments in favor of the proposed legislative shift can be found in almost all the post-1990 contributions to the debate. Taken together, these succinctly summarize the government's rationale for adopting the "state security" legislative model:

- counterrevolution was an obviously political concept, not a legal one, and its application in the case of political prisoners was proving to be an increasing liability for China internationally;
- the term's continued presence in the criminal code impeded the growth of China's international judicial cooperation with other countries, particularly posing obstacles to the conclusion of bilateral extradition treaties;
- the legal requirement for a subjective "counterrevolutionary purpose" (*fan'geming mudi*) to be shown for conviction created unnecessary procedural difficulties for the courts;
- the continued use of counterrevolution on the mainland would be inimical to the successful implementation in Hong Kong of the "one country, two systems" formula after July 1997, and thereafter in Macao and, eventually, in Taiwan.

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[15] Zhao Bingzhi and Bao Suixian, "Woguo Xingfa Gaige Ruogan Redian Wenti Lunlue" ("Discussion of Several Hot Topics in China's Criminal Law Reforms"), *Hebei Faxue* (*Hebei Jurisprudence*), No.4, 1993.

[16] Guo Qun, "Guanyu Fan'geming Zuizhang de Tiaozheng" ("On Readjusting the Chapter on Crimes of Counterrevolution"), Chapter 20 of *Zhongguo Dangdai Xingfa Gaige [Reform in China's Contemporary Criminal Code]*, Cui Qingsen (ed.), (Shehui Kexue Wenxian Press, November 1991).

[17] Li Wenyan, "Fan'geming Zui Gaiwei Weihai Guojia Anquan Zui Qianyi (My Humble Views on the Change from Counterrevolutionary Crimes to Crimes of Endangering State Security)," *Fazhi Ribao [Legal Daily]*, March 14, 1990.

The decision to make the change was clearly a tacit admission that the old excuses for imprisoning political dissidents had failed to convince the outside world. While consistently denying that there were any political prisoners in China, the authorities had always insisted that since crimes of counterrevolution were specified in the criminal code, all those convicted of such offenses were simply "common criminals." By finally banishing counterrevolution from the code, the authorities apparently hoped to lift the embarrassing shadow of "political imprisonment" from China's international image. However, no actual releases of political prisoners would be required in order to accomplish this dramatic transformation: a mere change of label would suffice.

A closely related point concerned the considerable difficulties the Chinese authorities have been experiencing in trying to persuade other countries to establish more cooperative cross-border judicial relations with China, particularly regarding the mutual extradition of criminal suspects. As the following passage from an article discussing this topic that appeared in the legal press in 1993 demonstrates, maintaining the fiction that China has "no political prisoners" had become virtually impossible:

> The term "crimes of counterrevolution" is not conducive to the maintenance of China's national sovereignty and dignity. Counterrevolutionary offenses, under the existing criminal code, have always been viewed internationally as being crimes of a political nature — and the principle of "non-extradition of political prisoners" is universally recognized under international law. However, it would by no means be true to say that all of China's counterrevolutionary crimes are in fact political crimes: quite a few of them are recognized under international law as being common criminal offenses.[18]

One could hardly ask for a more frank, if indirect, admission of the political nature of the other offenses that are not so regarded under international law. Moreover, as the following makes clear, the actual targets of the Chinese government's efforts to facilitate international extradition proceedings potentially include political dissidents and other opponents of the regime, as well as hijackers or terrorists:

> [China's] continued use of [the legal category] "crimes of counterrevolution" means not only that certain counterrevolutionary criminals who have escaped abroad can never be pursued and brought to account under Chinese law, but also that such people may then even be allowed to form themselves into a small-scale anti-China force overseas, thereby diminishing China's international political reputation.[19]

And as yet another Chinese legal commentator wryly noted:

[18] Zhao Bingzhi and Bao Suixian, "Woguo Xingfa Gaige Ruogan...," *Hebei Faxue*.

[19] See *"Dui 'Fan'geming Zui' de Xiugai Jianyi"* ("Suggestions for the Revision of 'Crimes of Counterrevolution'"), by Liu Defa and Kong Deqin, *Fazhi Ribao [Legal Daily]*, June 2, 1990.

> Because we call certain offenses "counterrevolutionary crimes," a number of countries regard these as constituting "political crimes" and so refuse to permit extradition [of the offenders]; indeed, some such criminals have even succeeded in obtaining political asylum in the countries concerned.[20]

The 1979 criminal code required that the state prosecutor demonstrate the defendant's "subjective counterrevolutionary purpose" (fan'geming mudi); as noted below in Section IV, many of the miscarriages of justice that occurred during the Cultural Revolution have been attributed to the absence of any such judicial requirement at that time. In revising the code, Chinese authorities could easily have required the prosecutor to show the defendant's "subjective purpose" of endangering state security. Instead, they dropped the requirement of showing such a purpose entirely. That they chose to do so was in part intended to facilitate convictions under the new law. But a more fundamental reason was probably that to retain the "subjective purpose" requirement would have meant including in the revised criminal code some more precise and specific legal definition of what an "act endangering state security" actually entails.

Another possible reason for the removal of counterrevolution involves Hong Kong. Counterrevolution was perceived as essentially incompatible with the concept of "one country, two systems." Time and again, in the legal debate on this topic in recent years, the theme of "one country, two systems" and the imminent return of Hong Kong to Chinese sovereignty has been raised as being a prime reason for China's need to eliminate the term counterrevolution. The broad explanation lies in what is referred to in the relevant literature as China's need to assert its "universal criminal law jurisdiction" (*xingshi pubian guanxiaquan*), that is, to extend the general applicability of China's criminal code, in both geographical and conceptual senses.[21]

More pertinently, several mainland legal scholars have presented the following hypothetical situation as illustrating the need for a certain congruence to be established between the mainland Chinese and Hong Kong criminal law systems. As one writer describes it:

> Under the [PRC] constitution and the "one country, two systems" prescription, the socialist system on the mainland will continue to coexist for a long period of time with the capitalist systems in Hong Kong, Macao and Taiwan. If we continue to retain the stipulations on crimes of counterrevolution in the criminal code, therefore, we will unavoidably create insoluble contradictions for ourselves in a number of areas. Suppose, for example, that someone carried out conspiratorial activities aimed at subverting or splitting off [from China] the governments of the special administrative regions (SARs) of Hong Kong, Macao or Taiwan. Should such activities then be defined as constituting revolutionary behavior or, alternatively, counterrevolutionary behavior? Quite clearly, neither of the two characterizations would necessarily be very appropriate. To define such actions as constituting the crime of endangering state security, however, would be proper and accurate, since in the context of "one country, two systems" both the socialist system on the China mainland and the capitalist systems of Hong Kong, Macao and Taiwan are lawful social systems.[22]

And as another scholar explained, in a similar vein:

[20] Li Wenyan,"Fan'geming Zui Gaiwei...," *Fazhi Ribao*.

[21] This endeavor can also be seen in the language of the new criminal code's articles of extraterritorial criminal jurisdiction, which is discussed in Section IV below.

[22] Guo Qun, "Guanyu Fan'geming Zuizhang de Tiaozheng," Chapter 20 of *Zhongguo Dangdai Xingfa Gaige*.

> In the near future, the mainland socialist system and the Hong Kong, Macao and Taiwan SAR capitalist systems will all coexist side by side, collectively forming the People's Republic of China. At that time, China's criminal code will be charged with the dual task of safeguarding the mainland's socialist system and at the same time safeguarding the capitalist systems of Hong Kong, Macao and Taiwan. In terms of their basic nature, however, these two types of system are fundamentally opposed to one another. To define actions aimed at overthrowing or subverting the capitalist systems of the Hong Kong, Macao or Taiwan SARs as constituting the crime of counterrevolution would obviously fly in the face of the [legal requirement on] "counterrevolutionary intent." On the other hand, to affirm and uphold such actions as constituting revolutionary behavior would not be in conformity with the policy of "one country, two systems." By renaming crimes of counterrevolution...as crimes of endangering state security, we can readily resolve this double-edged state of contradiction in the criminal law.[23]

Given that one of China's main pledges to Hong Kong under the "one country, two systems" formula was that the territory's quite separate and independent legal system would remain so after the resumption of sovereignty, this repeated emphasis on the need for China's former laws on counterrevolution to be retooled in ways that make them "compatible" with the "one country, two systems" formula is very troubling. After all, if China's criminal code is not to be applied in the territory, as Beijing has repeatedly pledged will be the case, why then should the question of such legislative compatibility, or the lack of it, be an issue?

The implications are still far from clear. One clue is that Article 23 of the Basic Law of the Hong Kong SAR (the territory's future mini-constitution enacted by the NPC in 1990) appears to require the independent formulation by the SAR government of a security law applicable only to Hong Kong. Article 23 reads:

> The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.[24]

Thus it is possible that the precise timing of the Chinese government's decision finally to replace the former criminal code statutes on counterrevolution, after more than a decade of discussing the subject, was determined in part by Beijing's perceived need to achieve some degree of convergence in legal language in this area in advance of the resumption of sovereignty and prior to any drafting of Hong Kong-specific security legislation. After all, Beijing retains control over foreign affairs and defense and thus potentially has significant jurisdiction over state security issues relating to Hong Kong.

[23] Zhao Bingzhi and Bao Suixian, "Woguo Xingfa Gaige Ruogan...," *Hebei Faxue*.

[24] The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted at the Third Session of the Seventh NPC on April 4, 1990. Article 23 was added to the Basic Law draft only after the June 4, 1989, suppression of the mainland democracy movement.

A final reason given for the shift in terms from "counterrevolution" to "endangering state security" was put forward by a senior Chinese official, who noted that the change was appropriate because China had moved "from the period of revolution to the period of construction." A close comparison of the formulations in the two laws reveals that the Chinese authorities continue to believe that strict suppression of political dissent is an essential part of their "construction" project.[25]

The International Dimension

International pressure of another sort has also undoubtedly played a part in the revisions of the counterrevolution section of the new criminal code. Throughout the reform era, but particularly since 1989, the Chinese government has been under pressure from other governments, U.N. human rights monitoring bodies, and nongovernmental organizations (NGOs) to improve human rights conditions, both through practical measures, such as releasing prisoners, and through the enactment of legal reforms.

Since the United States delinked Most-Favored Nation trading status for China from human rights in 1994, the yearly meeting of the U.N. commission on Human Rights has been a major focus of such pressure. Since 1990, a resolution critical of China's human rights practices has been put forward at the commission.[26] The annual NPC session conveniently falls just before the commission's opening, thus presenting an opportunity for the government to showcase legal reforms which could help diffuse pressure for a commission resolution. This proved to be a useful tactic in 1996, following the NPC's adoption of revisions to the Criminal Procedure Law.[27] Although informed commentators agree that the revisions did not, in fact, incorporate the presumption of innocence as it is defined in international human rights standards into Chinese law, the international media generally reported that the new Criminal Procedure Law *had* made this crucial change.[28] Furthermore, China was praised for eliminating a form of administrative detention called "shelter and investigation" and thus reducing the period of detention before formal arrest, but the fact that suspects could still be detained for between two and three years prior to trial went unnoticed.[29]

[25] From Wang Hanbin's address to the NPC session, see Summary, above.

[26] Human Rights Watch/Asia, "Chinese Diplomacy, Western Hypocrisy and the U.N. Human Rights Commission," *A Human Rights Watch Short Report*, March 1997.

[27] For an excellent overview of improvements to human rights protections contained in the revised Criminal Procedure Law, as well as the many serious deficiencies remaining in terms of international human rights standards, see *Opening to Reform? An Analysis of China's Revised Criminal Procedure Law*, a report from the Lawyers Committee for Human Rights, New York, October 1996. The book also contains an interesting discussion of the role of international pressure in promoting these reforms, as well as the increasing reference Chinese legal scholars are making to international human rights standards as support for their arguments for changes in the law.

[28] For a variety of viewpoints on this issue, see *Opening to Reform?*; "The Revised Criminal Procedure Law: Will it Mean What it Says?" by Yu Ping, and "Positive Signals: The Legislative Process and Human Rights," by Yu Haocheng, both in *China Rights Forum*, Fall 1996; Human Rights Watch/Asia, "China: The Cost of Putting Business First," *A Human Rights Watch Sort Report,* vol. 8, No. 7, July 1996; and "The People's Republic of China — Torture and Ill-treatment: Comments on China's Second Periodic Report to the U.N. Committee Against Torture," Amnesty International, April 1996.

[29] These time limits for detention before trial are cited in the official publication *Gong'an Yanjiu* (*Public Security Research*), No.3, 1996. Using all the extensions permitted in the Criminal Procedure Law, a suspect could actually be detained before trial for between 547 and 877 days. The longer time period includes various extensions for when the suspect is discovered to have committed additional crimes and for both the Procuracy and the court to call for a "change of jurisdiction" because of some alteration in the charges brought against the accused.

The Chinese authorities may have hoped that the new criminal code might make a contribution similar to that of revisions to the Criminal Procedure Law last year. However, the daunting length and complexity of the new criminal code have limited its usefulness in this regard. Moreover, even Chinese officials, in advance comments on the revisions, characterized the elimination of counterrevolution as little more than a change of terminology. Evidently on this issue domestic considerations about maintaining "stability" won out over attempts to influence international public opinion. Interestingly, a front-page commentary in the principal legal newspaper in China, *Legal Daily*, failed even to mention this change.[30]

IV. CHANGING "COUNTERREVOLUTION" TO "ENDANGERING STATE SECURITY"

The 1979 criminal code listed twelve main categories of counterrevolutionary crime in fifteen separate articles (Articles 90 to 104), including both violent and nonviolent offenses. By contrast, the new criminal code applies the term "endangering state security" to a broad range of actions detailed in twelve articles (Articles 102 to 113). NPC Standing Committee vice chairman Wang Hanbin, when introducing the revised law, stated:

> Except for the original provisions on colluding with a foreign state in plotting to jeopardize the sovereignty, territorial integrity and security of China that are kept unchanged, more clear-cut, specific and stringent provisions are formulated for the crimes that currently constitute the most grave danger to the State.

However, while the new offenses detailed in the law are somewhat more specific, the central premise behind the whole section, the concept of "endangering state security," is left completely undefined: the new chapter on "Crimes Endangering State Security" contains no operative definition similar to the old Article 90, which began the chapter on counterrevolution:

> Article 90: All acts endangering the People's Republic of China committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system are crimes of counterrevolution.

In the revised criminal code, this provision has simply been deleted. This demonstrates the government's desire to expand the jurisdiction of the revised criminal code's statutes concerning "threats to state security" as far as possible. The authorities could quite easily have recast Article 90; all that would have been required would have been for the final word of Article 90 to be replaced by the phrase "endangering state security." The scope of such acts would then, however, have been legally restricted to any assaults, however imaginary, on the dictatorship of the proletariat and the socialist system.

While on a general level, the concept of "endangering state security" continues to denote the purely political actions aimed at overthrowing the dictatorship of the proletariat and the socialist system previously covered under counterrevolution, it is no longer *restricted* to such actions. Henceforth, both entirely non-political actions (such as, in the case of Wang Dan, the authorities' charge that Wang provided humanitarian assistance to the families of imprisoned dissidents), and also actions with a very different political aim and content (such as the above speculative examples of attempts to subvert the capitalist political systems of Hong Kong, Macao, or Taiwan) can potentially be dealt with under the judicial rubric of "endangering state security."

[30] See "The New Criminal Code Should Strike Root in the Hearts of the People," *Fazhi Ribao (Legal Daily)*, March 19, 1997.

On a more specific level, when considered together with provisions of the State Security Law the new law considerably extends the scope of who or what may actually be targeted for prosecution. Under the old statutes on counterrevolution, only real or "natural" persons (*ziran ren*) could be charged and convicted of the various offenses concerned; under the State Security Law, both actual people and also "institutions, organizations and individuals outside the country" (together with domestic organizations that "collude" with them) may be charged and convicted of endangering state security.[31] The revisions of the criminal code incorporate these key concepts of the State Security Law. This important change, which is mainly designed to facilitate the suppression of organizational links between domestic and international critics or opponents of the Chinese authorities, at the same time reflects a legal category that was newly incorporated into China's criminal code by the recent revisions: the concept of "unit crime" (*danwei fanzui*), denoting offenses committed by corporations or other social groups (whether technically "legal persons" or not) rather than actual individuals.[32]

As mentioned above, the removal of the legal criterion of subjective purpose from the section on "Crimes Endangering State Security" could make the application of the law even more arbitrary and lead to even more wrongful convictions than before. As two jurists pointed out in the Chinese legal press in 1990:

> In the past, especially prior to the [December 1978] 3rd Plenum of the 11th Central Committee of the CPC, a large number of unjust, false and erroneous cases (*yuan-jia-cuo an*) were caused by the [authorities'] failure diligently to investigate the motivation and objective of the persons carrying out the actions concerned, and instead determining the nature [of the offense] solely on the basis of the actions themselves.[33]

Since both the subjective purpose requirement and any objective categorical definition of "acts endangering state security" are missing from the new criminal code, how then are the judicial authorities supposed to identify and evaluate such acts? One might assume that the most valid standard to apply in this regard would be the extent of actual social harm resulting from the actions in question. In fact, however, this issue is also deemed to be fundamentally irrelevant to the determination of such acts, as the following passage explains:

> According to...the law, where activities involving conspiracy to subvert the government, splitting the nation or the overthrow of the socialist system are concerned, it is not necessary that any actual harmful consequences should ensue; provided only that such actions have been performed, then legal responsibility must be pursued.[34]

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[31] This information on the expanded definition of the range of "criminal subjects" (*fanzui zhuti*) that can be prosecuted for endangering state security appears in *Zhonghua Renmin Gongheguo Guojia Anquan Fa Shiyi (An Explanation of the PRC Law on State Security)*, Criminal Law Section of the NPC Standing Committee's Legislative Commission (ed.), Law Publishing House (Beijing), June 1993.

[32] According to the revised law's Chapter 2, Section 4 ("Crimes Committed by a Unit"): "*Article 30:* A company, enterprise, institution, organization, or group which commits an act endangering society that is stipulated in law as a unit crime [*danwei fanzui*] shall bear criminal responsibility. *Article 31:* A unit responsible for a criminal act shall be fined. The person in charge and other personnel who are directly responsible shall also bear criminal responsibility. Where there are other stipulations in the Special Provisions of this Law or other laws, those stipulations shall apply." The incorporation of the concept of "unit" crime may also explain why the old charge of "organizing (or actively participating in) a counterrevolutionary group" (former Article 98) has not been specifically retained in the new law. Such groups or entities can now be directly prosecuted under the law, and thereby can be closed down and have their assets seized, while the actual persons chiefly responsible for them can be separately prosecuted under the particular article (or articles) of the chapter on "crimes of endangering state security" that most closely describe the specific aims and purposes of the group or entity in question.

[33] See Li Li and Li Shaoping, "Lun Fan'geming Xuanchuan Shandong Zui de Rending" ("On the Determination of Crimes of Counterrevolutionary Propaganda and Incitement"), *Xiandai Faxue [Contemporary Jurisprudence]* No.1, 1990.

[34] Criminal Law Section of the NPC Standing Committee's Legislative Commission, *Zhonghua Renmin Gongheguo Guojia Anquan Fa Shiyi*.

The latter continues to apply even when "the person concerned has secretly planned and made preparations toward conspiring to subvert the government, splitting the nation or overthrowing the socialist system, but has not yet actually performed any criminal actions of this nature."[35] In the absence of any requirement at all to demonstrate social harm, therefore, the courts are free to deal with such cases in accordance with the dangerous legal assumption that "acts endangering state security" constitute a self-evidently obvious class of events requiring no further verification beyond their initial labeling to that effect by the "competent authorities" (*youguan bumen*).

The Scope of Counterrevolution

On the positive side, the new law removes offenses such as killing by poison or other means (Article 101), participating in a mass prison raid or jail break (Article 96) and sabotage (Article 100), from the list of political crimes. These counterrevolutionary charges were legally redundant, since the acts in question could equally well have been handled under existing common criminal statutes. However, they have often been used to impose harsh punishments on the basis of questionable evidence. For example, "counterrevolutionary sabotage" was the charge laid against many pro-democracy protesters during the 1989 crackdown. While the charge included violent offenses such as arson, it was also used to impose harsh sentences, sometimes up to life imprisonment, on dissidents who had merely defaced a public portrait of Chairman Mao or torn down government posters. In such cases, minor criminal charges would clearly have sufficed for normal law-enforcement purposes. This change should, in theory, prevent the interference of political considerations in the examination of ordinary crimes. But the politically-motivated prosecution of political and religious dissidents on trumped up criminal charges, often for acts which would not normally be prosecuted, puts such an outcome in doubt.[36]

Certain crimes in the 1979 criminal code, such as "armed mass rebellion," covered acts which would be recognized as criminal offenses under international law. Others, such as "colluding with foreign states to harm sovereignty or split the nation" (Article 91) and "conspiring to subvert the government" (Article 92), resemble offenses recognized in other countries, for example, "treason" and "subversion." In practice, however, charges under Article 91 were mainly applied against ethnic separatists in Tibet, Inner Mongolia and Xinjiang while those under Article 92 were brought against peaceful pro-democracy dissidents.

The death penalty has been extensively employed against individuals convicted of counterrevolution. Counterrevolutionaries sentenced to death have often been those convicted of violent or other clearly criminal activities, but there are also numerous cases on record through the 1980s of individuals, both men and women, having been executed for nonviolent counterrevolutionary offenses ─ particularly among those, usually peasants, convicted under Article 99 for the crime of "organizing and using reactionary sects or secret societies for counterrevolutionary purposes."[37]

[35] Ibid.

[36] See, for example, Human Rights in China and Human Rights Watch/Asia,"China: Use of Criminal Charges Against Political Dissidents," *A Human Rights Watch Short Report*, vol. 6, no. 11, October 1994.

[37] *Detained in China and Tibet: A Directory of Political and Religious Prisoners*, Human Rights Watch/Asia, February 1994, see for example pp.251-254, pp.342-346.

Two other counterrevolution articles in addition to Article 99 covered activities solely involving nonviolent exercise of the internationally recognized rights to freedom of expression and association. These offenses were the crime of "organizing or leading, or actively participating in, a counterrevolutionary group" (Article 98) and the crime of "carrying out counterrevolutionary propaganda and incitement" (Article 102). According to the figures released over the years by the Chinese authorities, these three articles accounted for the vast majority of all counterrevolutionary convictions from the early 1980s onwards. While "reactionary sects and secret societies" have now been removed from the remit of the criminal code's chapter "Crimes of Endangering State Security," involvement in such groups is still a criminal offense.[38]

Analysis of the New Code

If the new state security chapter is compared with the old counterrevolution section, the scope of security crimes appears to have been reduced. But the new criminal code also incorporates a number of concepts and specific offenses covered in other security legislation. Thus the principal elements of the 1993 State Security Law, the State Secrets Law and the implementing regulations for both now appear in the criminal code.

The following article-by-article analysis clearly demonstrates that the scope of state security crimes in the new law goes far beyond the reasonable limits required by Article 29(2) of the Universal Declaration of Human Rights:

> In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The scope and social significance the authorities attach to the security section of the law is emphasized by the fact that, as with the counterrevolution section of the 1979 criminal code, the section titled "Crimes Endangering State Security" is Chapter One of the "Special Provisions" which describe specific offenses and the sentencing ranges for them. It is also no accident that the first article, replacing the definitional paragraph Article 90 in the 1979 version, prohibits collusion with foreign forces.

Article 102: The articles on collusion in the 1979 and 1997 codes are identical at the outset. The new code's Article 102(1), "colluding with foreign states to harm the sovereignty, territorial integrity and security of the People's Republic of China," is essentially identical to Article 91 in the 1979 law. However, in Article 102(2), a crucial addition is made:

> Those who collude with foreign institutions, organizations and individuals to commit the above offense may also be punished according to the provisions of the preceding clause.

Incorporating language from the State Security Law, this change significantly broadens the scope of the old law, since it expands those who can be colluded with beyond foreign states to any foreign "forces," including individuals.

Claims of such "collusion" have been a major feature of dissident trials in recent years, with telephone conversations about "the struggle" with friends and associates overseas being presented as examples in the cases of both

[38] Moved to Chapter Six of the "Special Principles," entitled "Crimes Damaging Social Management and Order," involvement in "secret societies and heretical religious organizations" is still a separate category of offense, under Article 300, although its scope is much reduced and the offense is no longer punishable by death. The main description of the crime in question reads: "Organizing or using secret societies or heretical religious organizations, or using superstitious beliefs to damage the implementation of state law and administrative regulations." For serious offenses in this category, sentences of seven years or above are available.

Wang Dan and Wei Jingsheng. Under the new law, this offense is punishable by sentences of ten years to life in prison, or execution, despite the fact that as in all the following articles, there is no standard of harm which must be shown to trigger any penalty.

Article 103 expands the provision from the old Article 91 on "splitting the nation" into a whole separate article, clearly aimed at pro-independence movements and activists in restive ethnic minority regions such as Tibet, Xinjiang and Inner Mongolia. Article 103(1) allows penalties of up to life imprisonment or even death for the crime of "organizing, scheming and carrying out activities to split the nation and sabotage national unity." Article 103(2) permits sentences of over five years, thus up to the statutory maximum of fifteen years for sentences of "fixed term imprisonment,"[39] for "ringleaders" in acts of "incitement to split the nation and sabotage national unity." This latter clause obviously duplicates key elements of the "counterrevolutionary propaganda and incitement" charge in the old law. China has never limited its interpretation of incitement to incitement to violent action; indeed, it interprets incitement to include even speech that is likely to provoke no reaction other than tarnishing the reputation of the state or the Party in the views of the audience. Thus neither clause in the new Article 103 requires that any violence, or incitement to violence or other criminal behavior, be involved for the act in question to be an offense.

In Tibet, prisoners serving sentences for counterrevolutionary offenses already make up a much higher proportion of the total inmate population than in mainland China. Minister of Justice Xiao Yang, speaking in 1993, said that in the whole country counterrevolutionaries made up only 0.3 percent of the prison population.[40] But according to a confidential journal for prison officials, in Tibet such prisoners were 6.5 percent of the total number. Other sources put the proportion in Tibet as high as 20 percent.[41]

Article 104 defines what is essentially the same offense as the old Article 95, prohibiting participation in "armed rebellion or armed riots," or "instigating, coercing, luring, or bribing employees in state organizations, personnel in armed units, people's police, or militia members" to join in such actions. While life imprisonment and the death penalty are likewise available for crimes under this article, the new criminal code also allows for sentences of below three years for lesser participants in the offense.

Article 105 is a key part of the new law, incorporating as it does elements from the old law's Article 92 ("conspiracy to subvert the government"); Article 98 (organizing and/or participating in a "counterrevolutionary group"); and Article 102 ("counterrevolutionary propaganda and incitement"), as well as language from the State Security Law. This article is also the only one in which a mention of the socialist system, protecting which was such a feature of the counterrevolution clauses, is made. The new article defines the offenses it covers as "organizing, scheming and acting to subvert the political power of the state and overthrow the socialist system" in 105(1) and "incitement to subvert the political power of the state and overthrow the socialist system by means of spreading rumors, slander or other means" in 105(2). This latter formulation could be seen as an expansion of the scope of what was defined as "propaganda" in the 1979 law, since the catch-all "other means" leaves the parameters open to constant reinterpretation. Again, incitement to subversion seems to require little more than communicating dissenting opinions, not provoking violent or criminal acts. Sentences available range from probation to life imprisonment for for 105(2). In an important change, the death penalty, previously potentially applicable to those convicted of the type of crime now contained in Article 105(1), has been eliminated as an option for this offense.[42]

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[39] According to Article forty-five of the new criminal code (a provision unchanged from the previous version) sentences of fixed term imprisonment may be between six months and fifteen years. However, Article 69 stipulates that when individuals are convicted of two or more charges, fixed term imprisonment sentences of up to twenty years may be imposed.

[40] See "A Discussion of the Special Characteristics of Ethnic Prisoners in the Tibetan Region and of Measures to Deal With Them," *Fanzui Yu Gaizao Yanjiu* (*Research in Crime and Reform*), No.5, 1991.

[41] This figure is based on the total number of counterrevolutionaries and ordinary prisoners in Tibet given by an official speaking to Western journalists on condition of anonymity in 1995, cited by the Tibet Information Network.

[42] The death penalty was never applicable to Article 102 of the 1979 law.

If the fact that its precursors accounted for the vast majority of counterrevolution convictions in recent years is any guide (virtually all of the cases known to human rights groups fall into this category), Article 105 is likely to be the most frequently used part of this chapter of the new criminal code. In combining the 1979 law's articles 98 and 102 with the more serious offense in Article 92, the authorities are inextricably linking subversion with acts of free association and free expression. This has been made very clear in recent dissident trials. For example, at the 1996 trial of a group of Guizhou activists who drafted and distributed an open letter to the authorities calling for democratic reform, human rights improvements, and the release of political prisoners, although the charges were under articles 98 and 102, the verdict stated that the defendants "aimed to subvert the dictatorship of the proletariat and the socialist system .... [and] the leadership of the CCP."[43] Criticizing the government in a public fashion, such cases show, has thus become synonymous with subversion.

Article 106 is a addition to the criminal code, stipulating that persons committing offenses under the previous three articles shall "receive a heavier punishment" if they are also found to have "colluded" with "institutions, organizations, or individuals outside the borders of the People's Republic of China." Nothing comparable to this appeared in the 1979 criminal code. If such a finding of collusion is made, the crimes detailed are subject to the heavier penalties in the sentencing ranges in the article in question.

Article 107, likewise an addition, stipulates that "Institutions, organizations and individuals inside and outside the country which subsidize organizations and individuals inside the country" in committing the offenses described in Articles 102 to 105 are liable to prosecution, with "personnel with direct responsibility" to be subject to sentences of five years or less, criminal detention or probation, although when "the circumstances are serious" sentences over five years (up to fifteen years fixed-term imprisonment) may be applied. While expanding jurisdiction of a domestic legal system beyond the borders of the state in question is a controversial issue in international law, many countries claim the power to prosecute for offenses which have an impact within their borders even when the authors have committed their crime outside those borders.

This principle of extraterritorial criminal jurisdiction (*yuwai xingshi guanxiaquan*) was contained in the 1979 criminal code. It also appears in the new law in Article 6 of the "General Principles" section: "Criminal acts or their consequences in which some part occurs within the territory of the People's Republic of China shall be considered offenses committed within the People's Republic of China."[44] However, this principle was not part of the counterrevolution section, and by linking it explicitly to this part of the new code as they do in Articles 106 and 107, the Chinese authorities are clearly sending a chilling message to those who seek to "subsidize" their domestic critics.[45]

The most obvious targets are the various groups which provide funds for former political prisoners or their families or which have programs to support activism there. Large amounts of money were raised in Hong Kong and in overseas Chinese communities around the world following the 1989 Beijing Massacre. This was a key issue in the prosecution cases against both Wei Jingsheng and Wang Dan, who tried to help channel money raised both inside and outside China to assist victims of political persecution. While Wei argued forcefully at his trial that this was a purely humanitarian effort, his claim was rejected by the court.

[43] See entries for Chen Xi, Huang Yanming, Liao Shuangyuan, Lu Yongxiang and Zeng Ning in Appendix A, below.

[44] The articles on this issue in the General Principles section are essentially the same as the relevant sections of the 1979 law.

[45] According to the definition provided in the State Security Law Detailed Implementation Regulations, Article 6, "subsidizing" activities which endanger state security includes providing individuals or groups concerned with "funds, locales, or supplies."

The main target of Article 107 appears to be Chinese activists overseas. Few countries are likely to extradite either Chinese nationals or foreigners to face trial for such a clearly political offense and *refoulement* of refugees who would face a threat to their lives or freedom for reasons of "race, religion, nationality, membership of a particular social group or political opinion" is banned under the Convention Relating to the Status of Refugees.[46] However, people caught in China could be subject to prosecution for this offense. And despite Hong Kong's separate legal system, Beijing may have the power to bring Hong Kong people to face trial in mainland courts under Article 107.[47]

Article 108 — "defecting to the enemy and turning traitor" — is more or less identical to the old Article 93 offense, except that the lowest specified sentence is now three years instead of ten. "Those who lead members of the armed forces, people's police and people's militia" to commit the offense are subject to higher penalties, of ten years to life imprisonment, or death.

Article 109 appears to duplicate the provisions of the previous article, with a slightly lower standard since an "enemy" is not involved. Persons subject to punishment under this article are:

> Employees of state organs who leave their posts without authorization while on public service and defect by fleeing from the country, or who defect from outside the country's borders, thereby endangering the state security of the People's Republic of China....

Penalties for this crime are relatively low, ranging from probation to a maximum of ten years in "serious" cases. Article 109(2) specifies that state personnel "who are in possession of state secrets" and commit this offense should be punished in the higher sentencing range specified in 109(1). Interestingly, in the earlier draft of the revisions this article contained much more sweeping language which would have allowed prosecution for *any* person, not just state employees, who committed the crime of "betraying the nation, and taking refuge with institutions or organization outside the country in order to carry out acts endangering the security of the PRC." While the decision not to incorporate such language indicates that the NPC may have made some effort to curtail the vast powers being granted to the state in this section of the law, unfortunately the principal elements of the draft's offense appear in other articles of the new criminal code.

Article 110 covers the crime of espionage dealt with in Article 97 of the 1979 law. While the sentencing range stays the same as before — three years to life imprisonment, or death — the former distinction between "agents" (*tewu*, which used to be reserved for Kuomintang spies from Taiwan) and "spies" (*jiandie*, denoting mainly Western or other non-Chinese agents) has now been dropped, and the latter term is instead used throughout. The new article includes two main categories of offense: "Joining an espionage organization or an accepting assignment from an espionage organization or its representative" in 110(1) and "identifying bombardment targets for an enemy" in 110(2). It is unclear from this article that those who carry out such "assignments" are required to be aware they are doing so for an entity identified by the authorities as a "spy organization."

[46] United Nations Convention Relating to the Status of Refugees, adopted July 1951, entered into force April 1954.

[47] Extradition arrangements between the future Hong Kong Special Administrative Region and the Chinese mainland have not yet been worked out and are still under discussion. Britain is arguing that the arrangement should be similar to one between two sovereign states, but Beijing has not accepted this idea.

In practice "espionage" is a highly elastic term in Chinese criminal law. For example, in unconnected cases, Hada and Ngawang Choepel were accused of this offense, yet no evidence was ever presented to show that either had access to any privileged information or that they passed anything resembling "intelligence" to any "spy organization."[48] Both are from sensitive ethnic minority regions — Inner Mongolia and Tibet — and both were concerned about the preservation of their respective cultures. And both received harsh sentences: fifteen years in prison for Hada, eighteen for Ngawang Choepel. In these two cases the designation "espionage" highlights the authorities' extreme sensitivity about contacts between people in such areas and outsiders.[49]

Article 111 incorporates into the criminal code the main principles of the State Secrets Law and the 1988 Supplementary Regulations of the NPC Standing Committee on the Punishment of Crimes Involving Leaking State Secrets regarding the provision of secret material to parties outside China.[50] Article 111 defines the offense as: "Stealing, prying into, purchasing or illegally providing state secrets or intelligence for institutions, organizations and individuals outside the country." While this generally mirrors the formulation of Article 32 of the State Secrets Law, the vague term "intelligence" (*qingbao*), which does not appear in that law, has been added, thus expanding the scope of materials covered beyond documents classified in accordance with the formal system it established. The full range of penalties is available for this crime, from probation to life imprisonment, or death.

As described below, virtually any official information can be classified.[51] Furthermore, as the case of Li Hai has recently demonstrated, merely "prying into" information which is not contained in any document marked "secret" may bring a heavy penalty. In 1996, Li was sentenced to a nine-year term for collecting information about Beijingers convicted of criminal offenses committed during the 1989 protests by making door-to-door visits to the families of the men in question. The information he gathered, according to the verdict in his case, was: "name, age, family situation, crime, length of sentence, location of imprisonment, treatment while imprisoned."[52] Another major target of prosecutions on secrets charges has been Chinese nationals working for foreign companies, who, as part of their work, have disclosed information which in most countries would be considered trade secrets, at worst.[53]

Article 112 introduces another offense not covered by the counterrevolution articles: providing weapons, munitions or other material assistance to the enemy in times of war. Penalties range from three years to life imprisonment, or death.

Finally, **Article 113** stipulates that all offenses specified in the chapter as a whole, with the exception only of those in Article 103(2); Article 105; Article 107; and Article 109, are to be additionally punishable by the death penalty whenever "the harm to the state and the people is especially serious and the circumstances especially odious." (For convenience, in the above explication of individual offenses, those where the death penalty is available have been noted, but this punishment is not listed in the individual articles themselves.) This article essentially duplicates a similar provision in the previous version. However, in the 1979 criminal code all but two of the twelve types of

[48] For more detail on these cases, see Appendix A, below.

[49] This is not to say, however, that ethnic minorities are more likely to be charged with espionage; it merely demonstrates the flexibility with which these terms are used.

[50] For more on the contents of these laws, see Section V, below.

[51] See Section V, below.

[52] For more information on this case, see Appendix A.

[53] See for example, "Oil giant employee released after year," *South China Morning Post*, Hong Kong, March 14, 1997, on a Chinese employee of Royal Dutch/Shell, Xiu Yichun, detained for a year on charges of "stealing state secrets." Although she was not prosecuted (and her employers said they had kept the case quiet trying to find a resolution), Xiu's counterpart at the China National Offshore Oil Corporation is thought to be still in detention and may face prosecution. Nothing is publicly known of what "secrets" the case allegedly involved. This is only the most recent of many such cases.

counterrevolutionary charges were punishable by death, thus the new law reduces by a small degree the scope of the death penalty's applicability to the offenses covered in the chapter.

Article 113 (2) concludes the chapter with a sweeping provision: "Whoever commits any of the crimes in this chapter may in addition be sentenced to confiscation of property." As in the 1979 law, there is no requirement that the property be in any way related to the commission of the offense in question.[54] In fact, this clause was part of the PRC's original counterrevolution law promulgated in 1951.[55] Thus the authorities may, quite legally, make paupers of dissidents at will.[56]

V. THE GROUNDWORK: THE STATE SECURITY LAW AND THE STATE SECRETS LAW

As mentioned above, the enactment of these two laws and their implementing regulations were important steps on China's path towards reformulating its security framework. A close examination of their provisions reveals the gradual expansion of the scope of what the authorities view as "protections" for national security and the impact they had on the new criminal code. They also demonstrate a major omission in all the legal provisions on state security: there is no effort whatsoever in any of these laws to establish standards to determine that any act has actually harmed state security or even could have done so. Such a showing by the government, which is a crucial requirement of the Johannesburg Principles[57] and by extension an essential component of due process,[58] is not required by any of these laws.

State Secrets Law

When the reform of the criminal code was proposed during the 1980s, very few laws or regulations had been written which systematically addressed the issue of state secrets. However, during these discussions and during the drafting of the State Secrets Law itself, there was virtually no public debate over how the scope of state secrets should be legally defined, although some scholars expressed concern over this privately. Legal scholars understood that such sensitive issues were actually governed by Communist Party policy and only secondarily subject to the provisions of the criminal code, and thus were outside the bounds of permissible debate.

[54] The criminal code's general articles (59 and 60) relating to the confiscation of property do not require that the property be related to the crime or be shown to be ill-gotten gains.

[55] See Section VI below for more details.

[56] Article 59 does state that the property of family members may not be confiscated and that both the offender and his/her family should be left with "necessary living expenses." However, the poverty line in China is generally set so low that families could be left with less than enough to live on even if they were allowed to keep sufficient for such a minimum standard.

[57] Principle 1(d) of the Johannesburg Principles reads: "No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate security interest. *The burden of demonstrating the validity of the restriction rests with the government*." (Emphasis added.)

[58] Although in many countries individuals may still be convicted of crimes such as sedition, subversion and treason merely on the basis of their speech without proving any harm, such restrictions are essentially incompatible with international human rights standards.

Despite this lack of public discussion, in many ways the 1988 State Secrets Law, while still containing serious ambiguities, was a significant improvement over the previous regime, in that it recognized that there should be a formal classification system for secret materials restricting their circulation to specific categories of people and subject to specific time limits.[59] Under the 1951 Provisional Regulations on the Protection of State Secrets which the new law superseded, almost anything could be classified as a state secret: "Indeed, a 'presumption of secrecy' might be said to pervade the PRC's approach to the flow of information," wrote Timothy A. Gelatt on the pre-1988 regime.[60] These regulations contained no procedure for determining whether or not a particular item was a state secret.

However, the scope of classified information under the State Secrets Law remained vast and infinitely expandable. While including many of the obvious areas — national defense, diplomatic affairs, science and technology and criminal investigations — the State Secrets Law's definition also includes questionable categories such as "major policy decisions on state affairs," "secret matters in national economic and social development," "those secret matters of political parties .... [that] concern the security and interests of the state" and a catch-all clause, "other state secret matters that the state secrecy preservation departments determine should be preserved."[61]

This tentative move towards a more restricted and formalized system, however, was reversed with the implementing regulations and other corresponding rules for the law which failed to duplicate even the minimal level of specificity of the law itself.[62] These rules delegated the power to ascertain the classification level of state secrets to a range of different departments and let them decide independently what should be considered a secret.[63] Although various procedures are established in these regulations for the specific marking of secret materials and for time limits on their classification,[64] these allow the authorities enormous latitude and have been ignored in a number of important cases.[65] No meaningful system of judicial review is envisaged; the system is entirely self-referential and closed.

[59] See "Recent Development: The New Chinese State Secrets Law," by Timothy A. Gelatt, in *Cornell International Law Journal*, Vol. 22, 1989.

[60] Gelatt, "Recent Development: The New Chinese State ...," *Cornell International Law Journal*.

[61] PRC Law on the Preservation of State Secrets, adopted by the NPC Standing Committee on September 5, 1988, Article 8.

[62] See particularly Implementation Regulations for the PRC Law on the Preservation of State Secrets, 1990 (henceforth State Secrets Implementation Regulations).

[63] The law itself confers classification authority very broadly, stating: "The specific scope of state secrets and their grades of secrecy shall be stipulated by the state secrecy preservation departments in conjunction respectively with the foreign affairs, public security or state security and other relevant central organs. Provisions on the specific scope of state secrets and their grades of secrecy shall be promulgated within the relevant spheres" (Article 10).

[64] The State Secrets Law recognizes three categories of classification: "secret" (*mimi*), "highly secret" (*jimi*) and "top secret" (*juemi*). The duration of classification for " secret" items is generally ten years, that of the "highly secret" twenty years, while for "top secret" materials the period is thirty years, but all of these time limits are subject to the discretion of the authorities. Furthermore, material in any of the three categories may also be labeled a "long-term" (*changqi*) secret — in other words, indefinitely classified.

[65] See particularly the case of Gao Yu, in which the materials in question were not, according to Gao, marked with any secret designation. *China — Leaking State Secrets: the Case of Gao Yu*, Human Rights in China and Human Rights Watch/Asia, July 1995, contains translations of documents from Gao's trial, as well as an examination of the application of the State Secrets Law more generally.

A detailed examination of the regulations issued by different authorities reveals that the scope of what they consider secret is enormous. In regulations promulgated jointly by the State Secrets Administration and the Supreme People's Procuratorate, for example, subjects ranked "top secret" (*juemi*) include information about the Strike Hard Anti-Crime Campaign (*yanda*), the number of people sentenced to death or charged with counterrevolutionary crimes, reports about cases involving cadres of above provincial level, as well as cases involving minority peoples.[66] Such information would probably be regarded as public knowledge in many other countries, and governments might even be obligated by law to publish the information. According to another set of regulations concerning state secrets, the number of people held under the form of administrative detention known as "Shelter and Investigation" is within the scope of state secrets maintained by the public security departments.[67] Moreover, statistics and information on cases of torture and drug smuggling are in the category of "highly secret" (*jimi*), in regulations of both the procuratorates and the public security departments. This latter provision may conflict with China's obligation to make information about torture cases and its actions to combat them available to the Committee Against Torture, which monitors the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.[68]

Other regulations enacted before the State Secrets Law but which remain in effect contain even more absurd items which are to be kept secret, such as "the actual cost of commodities exported to earn foreign currency,"[69] accidents occurring in the course of industrial production, the situation of epidemic diseases, even the curriculum of the minor concentration in state secrets available as courses in universities.[70] Some more recently promulgated regulations show that the concept of state secrets continues to be abused to prevent disclosure of information potentially embarrassing to the authorities. One regulation still conflates the terms "internal use only" (*neibu*) and "domestic publication" (*guonei faxing*)[71] with state secrets despite the fact that these terms do not appear in either the law or its implementing regulations. Many people were convicted of leaking state secrets for disclosing such information prior to the promulgation of the State Secrets Law, and even in 1993, a couple, Bai Weiji and Zhao Lei, were sentenced to ten- and six-year terms respectively on the charge of "leaking state secrets" merely for translating materials from magazines marked "internal use only" for *Washington Post* correspondent Lena Sun. Two others, Wang Jun and Tang Yi, also received two- and four-year sentences in the same case.

[66] Regulations on the Scope and Classification Level of State Secrets Concerning the Work of the Procuratorates, promulgated by the Supreme People's Procuratorate and the National Secrets Protection Administration, October 23, 1989, see Article 2(1).

[67] Provisional Regulations on the Scope and Classification Level of State Secrets Concerning the Work of the Public Security Organs, passed by the Ministry of Public Security, January 18, 1986, see Article 2, Section 2(4).

[68] The Committee Against Torture monitors the implementation of the Convention, which was adopted in 1984 and entered into force in 1987. China signed the Convention in 1988. See *Words Without Substance: The Implementation of the Convention Against Torture in the People's Republic of China*, a report from Human Rights in China, New York, April 1996.

[69] The Practical Administration of Statistical Materials Concerning State Secrets, State Statistical Bureau, March 15, 1985. Article 2, Item 5.

[70] Ibid., Article 3(6) and 3(7).

[71] The Practical Implementation by the State Secrets Protection Administration and the State Customs Bureau of Regulations on the Administration of Exit of Documents, Materials And Other Items Concerning State Secrets, Ministry of Justice, June 20, 1990. Article 1, Item 4 states that if internal documents and materials bearing designations such as "internal use only" or "domestic publication" are to leave the country, permission must be granted in advance from the Ministry of Justice's Committee on the Preservation of State Secrets.

Since the early 1990s, the majority of known cases involving secrets prosecutions have involved Chinese journalists, although many prosecutions of officials may have occurred behind closed doors. In some cases, the information concerned was published only in the domestic press.[72] In many of these cases, as in that of Bai Weiji and Zhao Lei, the courts demonstrated an extreme lack of proportionality in their sentencing, meting out heavy penalties for "crimes" which could only be defined as minor, if criminal at all, according to the relevant laws and regulations.[73] Such prosecutions were widely interpreted as "killing the chicken to frighten the monkey," a time-honored strategy of intimidation, aimed particularly at Hong Kong journalists and mainlanders who choose to assist foreign correspondents. According to a 1989 publication, in 50 percent of cases involving illegal disclosure of state secrets journalists were responsible, while government officials revealing such material in their articles accounted for 40 percent and disclosures connected with dereliction of duty by government officials were only 10 percent of cases.[74]

The evolution of the legal regime relating to secrets in the reform period shows the gradual expansion of types of people subject to ever heavier legal penalties for revealing information officials do not wish to be disclosed. In the 1979 criminal code, two types of offenses relating to secret materials were defined: "stealing, secretly gathering and providing intelligence for an enemy" (Article 97), punishable by life imprisonment or death; and violation of laws and regulations governing secrets (Article 186), punishable by a maximum of seven years in prison. Article 186 of the Code made clear that "state personnel" were the main targets of the prohibition on violating the laws and regulations on secrecy and disclosing secrets, although "consideration [could] be given according to the circumstances" to prosecution of people who were not state employees. Despite its establishment of formal classification procedures, however, the 1988 State Secrets Law implies that all Chinese people may have access to secrets: "All state organs, armed forces, political parties, social organizations, enterprises, institutions and citizens have the duty to preserve state secrets" (Article 3). Commentaries have appeared in newspapers reminding members of the public of their responsibility to "protect state secrets."

At the same time as it promulgated the State Secrets Law, the NPC Standing Committee issued regulations that essentially created a new category of offense, identifying the target of prosecutions as: "Anyone who steals, secretly gathers, buys or illegally provides state secrets for institutions, organizations or individuals outside the country," as well as drastically increasing the available penalties for offenses under the State Secrets Law.[75] These 1988 regulations filled in what the government perceived as a blank in the secrets regime, by allowing the authorities to punish *anyone* for leaking state secrets to *anyone else*. Thus a third category of secrets offense was formed, which did not necessarily involve either an enemy or an official breaking the rules. These regulations also introduced the expansive formulation "institutions, organizations and individuals outside the country" which would later become such a key element of the State Security Law. Thus this change laid the groundwork for the conceptualization of secrets and other offenses in the State Security Law, and ultimately, the new criminal code.

As pointed out above, the new criminal code continues to expand the concept of state secrets and punishable offenses related to their misuse. Article 111 adds the undefined term "intelligence" to the category of information not to be disclosed. Article 282 (replacing the 1979 law's Article 186) removes the presumption that those with access to secrets will be officials, and does not require that the information in question be publicly disclosed for an offense to be

[72] See "Sealing in Dissent: Secrets Laws Aim at Scaring Internal Critics into Silence," by Zhang Weiguo, *China Rights Forum*, Human Rights in China, New York, Summer 1995.

[73] Another notable example is the case of Xi Yang, sentenced in 1994 to a twelve-year term for reporting on China's plans to sell gold on international markets and on interest rate policies, information given him by a People's Bank of China clerk, Tian Ye, who received a fifteen-year sentence. The information in question could only be considered as the lowest level of classification ("secret"), yet Xi was prosecuted under the State Security Law. Xi was released on parole in early 1997.

[74] "Secrets Law and News Reporting," *Zhongguo Jizhe* (*China Reporter*), No.5, 1989, cited in *Media Law in the PRC*, by H. L. Fu and Richard Cullen (Asia Law and Practice, 1996).

[75] Supplementary Decision of the NPC Standing Committee Concerning Punishing Crimes of Leaking State Important Secrets, passed by the Third Plenary Meeting of the Standing Committee of the Seventh National People's Congress, September 5, 1988.

committed: "Those who obtain state secrets through stealing, secretly gathering or buying" are subject to penalties of up to seven years in prison. In 282(2), it also adds the new offense, punishable by up to three years imprisonment, of failure to disclose the origins or use of illegally-obtained materials, documents or objects in the categories of "top secret" or "highly secret."

State Security Law

This trend of gradually expanding the scope of legal punishment for disclosure of information is mirrored in the evolution of the State Security Law. While the State Secrets Law has been used in a politically expedient fashion after the 1989 Democracy Movement, the State Security Law is a direct product of the political suppression of these protests.[76] The political motive was obvious: the government intended to establish a system to eliminate any possibility of change through "peaceful evolution" by Western countries.[77] While on its face, as some commentators have argued, much of this law appears little different from laws in other countries on protecting national security interests, provisions contained in the detailed implementation regulations for it go far beyond legitimate national security concerns into outright prohibition of political or religious advocacy, matters at the core of free expression.[78] Furthermore, the State Security Law was explicitly linked to what the regime tacitly agreed were the provisions on political offenses,[79] since it did not contain any sentencing guidelines but referred for enforcement principally to the counterrevolution clauses of the old criminal code.

[76] The State Security Law was promulgated by the NPC Standing Committee on February 22, 1993. Corresponding Detailed Implementation Regulations were issued by the State Council and signed into law by Premier Li Peng on June 4, 1994, a date which clearly indicated that the law's main target was dissenters of all kinds.

[77] "Peaceful evolution" is a term coined by the CCP leadership in the wake of the 1989 movement describing an alleged campaign by Western governments to bring down China's socialist system and end one-party rule. Part of this "strategy" involved sponsorship of dissident forces both inside and outside China, the party claimed.

[78] According to "National Security Law in China," by H. L. Fu and Richard Cullen, *Columbia Journal of Transnational Law*, No.34, 1996, the sweeping powers conferred on the authorities under this law caused some disquiet, even within the system. This was demonstrated by the fact that the NPC Standing Committee amended the original draft to restrict the scope of the law somewhat, in particular changing the catch-all clause from "other activities endangering state security" to the final "other sabotage activities endangering state security" (Article 4[5]). Another indication of this is that although the NPC meets annually at the beginning of March, this law was passed by its Standing Committee just days before the 1993 session opened, and thus never presented to the full body.

[79] In explaining the proposed changes to the criminal code, Wang Hanbin said: "Counterrevolutionary activities stipulated in the current [1979] criminal law are still all considered as crimes, with the exception that some of the activities will be dealt with as *ordinary criminal acts*." (Emphasis added). Quoted in "Changes to Criminal Law 'Mostly Cosmetic'," *South China Morning Post*, December 26, 1996.

The primary target of the 1993 State Security Law is external interference. Thus its target is those maintaining a relationship with people or organizations outside China (including in Hong Kong and Taiwan). According to the State Security Law and its implementation regulations, acts which endanger state security include conspiracy to overthrow the government, splitting the country and subverting the socialist system, committed with the support of, or in collusion with, groups or individuals outside the country.[80] The scope of the law also includes espionage, misuse of state secrets and instigating state personnel to defect. Like many other such laws in the Chinese system, the State Security Law contains a catch-all clause, which essentially leaves the definition of the act to the discretion of the authorities concerned: "engaging in other sabotage activities against state security."[81]

Like the State Secrets Law, the State Security Law states that all citizens of the China are "duty-bound to safeguard national security, honor and interests."[82] Individuals can be punished if they refuse to answer questions or provide evidence relating to the acts covered in the law.[83] "Offices, institutions and other organizations" are also required to "educate" their staff about protecting state security and "should mobilize and organize personnel in preventing and checking acts of harming state security."[84]

As well as enlisting citizens, the law gives the agencies responsible for enforcing its provisions ― principally the State Security Bureau ― enormous powers to do so, ranging from stop and search to commandeering vehicles, using surveillance equipment and controlling the entry of persons into the country.[85] These powers go beyond even the extensive scope of operations of the public security organs, and there are no provisions in any of the laws or regulations imposing even minimal accountability to any state body, even the NPC, on the State Security Bureau.[86]

Article 8 of the implementing regulations contains a laundry list of activities which may be considered as falling under "other sabotage activities" in the law's Article 4. While the list includes terrorism and secessionist activities, most of the actions are clearly within the realm of constitutionally protected rights and freedoms, or, if criminal, could be dealt with under other articles of the criminal code. They include: "fabricating or distorting facts, publishing or disseminating written or verbal speeches, or producing or propagating audio and video products," "establishing social organizations or business institutions," "using religion," "creating national disputes or inciting national splittism" and "activities of individuals outside the country who disregard dissuasion and meet with personnel in the country who have endangered state security, or who are seriously suspected of endangering state security." Neither the law nor the regulations prescribe procedures for making the crucial determination of whether any harm was caused by the specific actions among those listed.

The key to determining whether such actions contravene the law appears to be an administrative determination, to be made by the State Security Bureau, that the person or group in question is "endangering state security." Thus the central issue in determining whether an act is criminal becomes whether or not its author has been determined to be a danger to state security, a question not to be determined by a court but solely on the determination of the State Security Bureau, as described below.

[80] State Security Law, Article 4 (1).

[81] State Security Law, Article 4 (5).

[82] State Security Law, Article 3.

[83] State Security Law, Article 26.

[84] State Security Law, Article 15.

[85] State Security Law, Articles 6-12.

[86] Fu and Cullen, "National Security Law in China," reference above.

The implementation regulations prescribe an entirely opaque and arbitrary process for making such determinations, allowing the State Security Bureau, which is to make the decision, unlimited latitude with no guidelines on how this power is to be exercised. In the case of "hostile institutions" and "agents of espionage institutions" mentioned in the State Security Law,[87] the regulations refer respectively to "institutions hostile to the PRC government and socialist system characterized by the people's dictatorship, as well as institutions which endanger state security" and "those people engaging in activities which endanger the People's Republic of China at the instigation of or commission of an espionage institution or its members."[88] Also, the State Security Bureau may label any individual as being "suspected" of endangering state security. If an organization outside China is deemed to be "hostile," any act it performs, or any contact it may have with anyone inside China could be labeled as "endangering state security." There is no requirement whatsoever that such determinations about the danger posed by individuals and groups inside and outside the country be made known to the people in question, or any opportunity for the individuals and groups so labeled to challenge that designation.

The criminalization of the exercise of fundamental rights which characterizes the State Security Law has been demonstrated with chilling effect in the prosecutions of dissidents Wei Jingsheng and Wang Dan, in December 1995 and November 1996 respectively. Although the State Security Law was only specifically cited in the latter case, its logic and methods pervade both cases. Activities such as providing assistance to victims of political persecution, publishing articles overseas and speaking to friends about the struggle for human rights and democracy were, in both cases, considered as acts of subversion. The courts ignored the defendants' arguments that they had no intention of subverting the government: in essence, the determination that the authorities viewed the two as "endangering state security" was all the "proof" the court needed to convict.

VI. THE USE OF COUNTERREVOLUTION: A CAUTIONARY TALE

The use of charges of counterrevolution against the CCP's political enemies and opponents — real or imagined — over the past half-century has probably generated more miscarriages of justice and devastated the lives of greater numbers of innocent people than any other single factor on China's judicial landscape. Given the numerous occasions, since 1949 especially, on which the ruling faction of the day has been obliged to denounce and overturn the wholesale political purges carried out in the name of "suppressing counterrevolution" by its defeated predecessors in the Party leadership, and the sheer extent of the mass "rehabilitations" of victims that have followed on each occasion, perhaps the most astonishing thing is that no Chinese leader has ever seen fit simply to abolish the concept altogether.

[87] The term "hostile organizations" (*diduì zuzhī*) appears only in Article 25 of the State Security Law, which reads: "Provided a person who has been coerced or entrapped by hostile organizations into participating in activities which harm the state security of the People's Republic of China explains the facts to an institution of the People's Republic of China abroad in a timely fashion, or upon entering the borders either directly or through an organization in the place in question explains the facts to the state security or public security organs in a timely fashion, he or she should not be prosecuted." However, the term likely applies to all the organizations mentioned in the law which are considered to carry out actions "harmful" to state security. Human rights organizations, among other groups, have been described by Chinese officials as being "hostile." The implementing regulations appear to have expanded the term beyond the scope envisaged for it in the text of the law itself, a tactic which has often been used by administrative agencies to dilute any safeguards present in specific legislation.

The term "espionage organization" (*jiāndié zuzhī*) appears in Article 4(2) of the law, which states: "All organizations and individuals carrying out acts which harm the state security of the People's Republic of China must be prosecuted under the law. [...] "Acts which harm the state security of the People's Republic of China referred to in this law are the following acts harming the state security of the People's Republic of China carried out by institutions, organizations and individuals outside the borders, or instigated and subsidized by them but carried out by others, or carried out by organizations and individuals inside the borders in collusion with institutions, organizations and individuals outside the borders: [...] "Joining an espionage organization or accepting an assignment from an espionage organization or its representative."

[88] Detailed Implementation Regulations, articles 4 and 5.

Instead, successive winners in the perennial intraparty power struggle have sought to lay the blame for these miscarriages of justice upon their predecessors' "erroneous" or "conspiratorial" political line.[89] Moves toward the mass rehabilitation of victims of political persecution have usually only come about after the downfall of the leadership factions responsible for the abuses in question, and such "reversals of past verdicts" have tended to serve largely as a means of boosting the popularity and legitimacy of the successor leadership groups. They have generally not proved to be possible during the leading perpetrators' continued tenure of power and there is thus no release or rehabilitation in sight for the 2,026 people convicted of counterrevolutionary crimes that the Chinese government acknowledges as being still in prison.

Historical Background

The world of criminal jurisprudence was first introduced to the concept of counterrevolution during the French Revolution, in a decree issued by the Jacobins on March 10, 1793 establishing the system of "revolutionary tribunals." The works of Marx and Engels are replete with references to "counterrevolution," and Lenin eventually enshrined the concept in the Soviet criminal code after describing it as being not merely a useful legal device but also an "instrument of terror" that would awe the opponents of the Bolshevik Party into submission. The term was subsequently incorporated into the criminal codes of several Soviet satellite states, although latterly the USSR itself dropped the term in favor of the less political-sounding "crimes of state."[90]

In China, ironically, the concept was first enshrined in law by Chiang Kai-Shek, the leader of the KMT, whose government on March 9, 1928, promulgated a "Temporary Law on the Punishment of Crimes of Counterrevolution" *(Zanxing Fan'gemingzui Zhizui Fa)* aimed primarily at the CCP.[91] Soon after establishing its first territorial base in Jiangxi Province, the CCP took steps to establish a similar legal regime, but aimed at suppressing the "KMT bandits" and their supporters among the local rural elite. On April 8, 1934, the Communist Party enacted its first formal law in this area: the "Regulations of the Chinese Soviet Republic on the Punishment of Counterrevolution" *(Zhonghua Suweiai Gongheguo Chengzhi Fan'geming Tiaoli).*

This first round in what was eventually to become an endemic cycle of purge and counter-purge within the Party resulted in so many wrongful executions of innocent people that almost fifty years later, in 1983, the State Council felt moved to issue an internal directive reporting:

> Some work-units and individuals have recently submitted petitions on behalf of comrades who were unjustly killed during the period of the Second Revolutionary Civil War [1927-37] .... requesting that these wrongly executed comrades be commemorated as martyrs.

[89] One prominent example was the Tiananmen incident of April 1976, when spontaneous public demonstrations of mourning for Premier Zhou Enlai in Tiananmen Square were suppressed by the government of the "Gang of Four." Thousands of demonstrators were arrested as "counterrevolutionaries" at the time, only to be released two years later, after the fall of the Gang, and officially proclaimed "heroes." By then, however, former colleagues and supporters of the Gang of Four were in turn being rounded up and convicted by courts around the country on other charges of "counterrevolution" — and in numbers unprecedented since the height of the Cultural Revolution.

[90] The Chinese term is "*guoshi zui*."

[91] According to the latter law, "All attempts to subvert the Chinese Nationalist Party and the National Government...are defined as crimes of counterrevolution." As the KMT's Judicial Yuan expressly proclaimed, moreover: "Cases involving the Communist Party are to be dealt with as counterrevolutionary offenses."

While assenting to demands for such cases to be thoroughly investigated and for posthumous rehabilitations to be carried out where necessary, the State Council nonetheless drew the line at conferring hero status upon these embarrassing old skeletons in the Communist Party's historical cupboard.[92]

Upon the CCP's assumption of power in October 1949, the clear evidence of widespread wrongful executions and imprisonments perpetrated by the party's secret police since the 1930s proved to pose no obstacle to the systematic expansion of the same kind of legal regime that had produced these earlier injustices. In February 1951, the Central People's Government passed a law, titled "Regulations of the PRC on the Punishment of Counterrevolution" *(Zhonghua Renmin Gongheguo Chengzhi Fan'geming Tiaoli)*, which was to serve as the main legal basis and justification for the systematic persecution of political dissidents and all other opponents of the party for most of the next three decades. In the early 1950s, huge numbers of alleged KMT spies, "diehard reactionaries," sectarian religious leaders, "anti-party conspirators," heads of traditional secret societies and the like were rounded up and either shot or sentenced to life imprisonment, on the basis of this draconian law, in the course of successive "Campaigns to Suppress Counterrevolutionaries" (*zhenfan sufan yundong*).

A particularly unfair aspect of the political purge process lay in the Public Security Bureau's frequent resort to "quotas" when making arrests. If Chairman Mao had stated, as he often did, that "95 percent of the people are good or relatively good, while only 5 percent are reactionaries," then the security authorities would diligently proceed to identify and punish, with as much precision as possible, the guilty 5 percent. The widespread application of this general rule is clear from police statistical data relating to the 1957 Anti-Rightist Movement which appeared in an "internal" (neibu) volume published by the procuracy in 1992. In a detailed discussion of China's system of "residential registration" (*hukou*), whereby every citizen is obliged to be registered with his or her local police station, the volume revealed that the police nationwide, since the early 1950s, have also been responsible for compiling and maintaining additional, secret registers known as the "priority population" list (*zhongdian renkou*). According to the book's authors,

> The main targets [of priority population work] are: counterrevolutionary suspects; those suspected of various criminal offenses; counterrevolutionary elements whose evil crimes have not yet been thoroughly investigated and uncovered; counterrevolutionary elements and hostile class elements who have not yet been fully reformed; and other persons already dealt with by the government who may well be, or are suspected of being, involved in criminal activities.

The same source goes on to disclose that in June 1956, quota percentages were set for the numbers of Chinese citizens who had to be included on the police's "priority population" registers. The national average figure was 0.4 percent of the total population; in larger cities, a figure of 1 percent was determined to be most appropriate; while in rural areas, the percentage was allowed to vary between 0.1 and 0.5 percent of the population, depending on local conditions. The book also reveals that quotas of people on the "priority" list were also to be subject to coercive measures:

[92] PRC State Council, "Guowuyuan Pizhuan Minzhengbu Guanyu Dui Di'erci Guonei Geming Zhanzheng Shiqi Sufanzhong Bei Cuosha Renyuan de Chuli Yijian de Tongzhi" (State Council Document #91, 1983), in *Xinfang Gongzuo Shiyong Zhengce Fagui Shouce*, Zhonggong Zhongyang Bangongting (Falu Chubanshe: neibu faxing), July 1992. The Party leadership's reluctance to confer "revolutionary martyr" status on those wrongfully executed during successive intra-Party purges has implications extending well beyond the mere "political status" of those concerned: it means that their surviving relatives are ineligible to receive the substantial material awards and other benefits to which the families and descendants of "revolutionary martyrs" are entitled.

> The National Hukou Work Conference of June 1956...laid down the requirement that, during the two-year period 1956-57, approximately 50 percent of the total number of persons to be placed under arrest (*daibu*) or subjected to control (*guanzhi*) were to be drawn from among those persons named in the local "priority population" registers.[93]

As is well known, the period in question witnessed as many as several hundred thousand cases of arrest, imprisonment or forced internal exile among Chinese intellectuals branded as "rightists" during May and June 1957, following the abrupt termination of Mao's "Hundred Flowers" experiment in allowing public criticism of the Communist Party. Given this historical reality, the above described quota system evinces a breathtakingly casual attitude towards basic justice in law enforcement work.

With Deng Xiaoping's return to power in late 1978, the growing trend towards an official condemnation and repudiation of both the Anti-Rightist Movement and the Cultural Revolution, together with rising public demands for the rehabilitation of the legions of counterrevolutionary political victims created during those two periods, acquired major new impetus. Over the next five years or so, virtually all of the hundreds of thousands of people who had been condemned, imprisoned, or executed for alleged counterrevolutionary offenses during the Cultural Revolution decade were exonerated by the new regime and declared to have been victims of the myriad "unjust, trumped-up or erroneous cases" *(yuan, jia, cuo an)* perpetrated by the Gang of Four and its followers. Similarly, the great majority of those branded as "rightists" in 1957 were finally rehabilitated, although Deng's role as Party General Secretary in overseeing the purges of that time meant that many simply had their political "hats" removed, rather than being officially pronounced innocent. (Although 1997 marks the fortieth anniversary of the Anti-Rightist Movement, the Chinese government reportedly issued a blanket ban on any activities commemorating the event.)[94]

Since the late 1970s, an extensive bureaucracy devoted solely to the task of reviewing applications for political rehabilitation has come into being in China. Voluminous internal CCP directives list all the complex criteria to be used in reassessing the various thorny questions involved, and similarly detailed rules exist for purposes of establishing a given purge victim's rightful place within the official hierarchy of overturned injustices and wrongful persecutions.[95]

The only just and appropriate governmental response to such an appalling judicial track record would have been for Deng and his colleagues, in the late 1970s, to have set about dismantling the entire legal category of "crimes of counterrevolution," thereby repudiating the manifest judicial failings of the past and holding out the promise of a more politically neutral criminal justice system. But instead, in July 1979, the new leadership chose to give pride of place in the country's inaugural criminal code to an entire chapter on counterrevolutionary crime laying down penalties ranging from several years in jail to life imprisonment or even death. Since then, at least ten thousand people, and probably far more, have been consigned to long terms in prison on charges of counterrevolution that were just as politically determined and legally unsound as in the past.

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[93] *Hukou Guanli Xue* (The Science of Residence-Registration Management), Chapter 13: Investigation and Social Control of Priority Population, Zhongguo Jiancha Chubanshe (China Procuracy Press), April 1992; volume marked: "For internal distribution within the public security organs."

[94] See "Events marking anniversary of anti-rightist drive banned," by Willy Wo-Lap Lam, *South China Morning Post*, January 20, 1997.

[95] Should the victim, for example: a) merely have his or her political "cap" or "label" removed *(zhai maozi)*, with the implication that the affixing of the label had originally been quite justified, but that the individual concerned finally deserved a break from persecution after so many long years; b) be "rehabilitated" *(pingfan)*, in the sense of having the original case or verdict against him or her overturned, and the sentence or punishment revoked; or c) be "fully exonerated" *(zhaoxue)*, a privilege generally reserved for more senior party officials who had fallen victim to past political persecutions, and which typically entailed much commemorative ceremonial activity, adulatory coverage of the case in the official press, and so forth? For a representative series of official government statistics on the mass rehabilitation of political purge victims after the Cultural Revolution, see *Organ Procurement and Judicial Execution in China*, Human Rights Watch/Asia, Vol.6, No.9, August 1994. See Section IV: "China's Record on Wrongful Convictions.

Deng first used the "weapon" of the new criminal code against his enemies on the left, in the December 1980 trial of the "Gang of Four," and then, with almost equal severity, against his perceived enemies on the "right," in a series of trials in 1981-82 against the leading writers and activists of the Democracy Wall movement of several years before. Wei Jingsheng, arrested in 1979 more than a year earlier than most of his colleagues in the movement, was the last prominent political dissident to be charged and tried under the old 1951 "Regulations on the Punishment of Counterrevolution," and there was speculation that if only Wei been "lucky" enough to have been arrested a little later and tried under the new criminal code, he might have received more lenient treatment. But the identical fifteen-year sentence handed down to his fellow activist Xu Wenli two years later, together with a series of comparably harsh sentences passed on other leading Democracy Wall figures, soon ended any such optimism.

In the context of current optimistic claims that the elimination of counterrevolutionary offenses somehow heralds greater official tolerance for dissenting views in China, it is worth recalling that at his December 1995 trial for "conspiracy to subvert the government," at which he received a sentence only one year shorter than in 1979, Wei again distinguished himself by being one of the very last dissidents to be charged and tried under the counterrevolution statutes of the 1979 criminal code. Any notion that Wei might have received more lenience if tried under the new statutes against "endangering state security" would surely be no less ill-founded this time around than it was almost twenty years ago.

How Many Counterrevolutionaries Remain?

The incidence of counterrevolutionary crime as a proportion of the total number of criminal offenses recorded each year in China had dropped, by the mid-1980s, to a very low level as compared with the situation during the first two decades or so of the People's Republic, according to official figures. The total number of imprisoned counterrevolutionaries has for many years been classified top secret, but the example of one province may serve to illustrate the general trend. In October 1959, Heilongjiang Province recorded a total prison inmate population of some 97,332 persons, of whom no fewer than 57,933, or just under 60 percent of the total, were counterrevolutionaries. By 1981, out of a total prisoner population of 23,685, the number of counterrevolutionaries had fallen to only 577, or 2.5 percent of the total.[96]

This spectacular reduction over time did not occur in a gradual or phased manner, but rather represented a sudden, dramatic drop over a brief several-year period from December 1978 onward. By 1982, for example, the government had officially exonerated the victims of more than 27,800 counterrevolutionary cases (probably involving a greater number of actual defendants) that had been falsely adjudicated in courts across the country during the two-year period from September 1976, when Mao died, until late 1978, when Deng returned to power. Similarly, in Fujian province alone during 1977-78, altogether 750 counterrevolutionaries were sentenced by the courts, of whom ninety-three received the death penalty and were executed. (Again, the great majority of those sentenced were eventually rehabilitated).[97] These various figures show the very extensive use that was still being made of such charges even after the conclusion of the Cultural Revolution.

[96] *Heilongjiang Jiancha Zhi*, Heilongjiang Provincial People's Procuracy, Harbin (Heilongjiang People's Press: 1988). Of the 577 persons imprisoned in 1981, just under half were said to be "historic counterrevolutionaries," i.e. political prisoners who had probably already been held in jail for several decades.

[97] For documentary sources on the above statistics, see Human Rights Watch/Asia, "Organ Procurement and Judicial Execution in China," see footnotes 44-47.

Thereafter, the numbers declined dramatically. During the period 1980-1984, Chinese courts tried a total of 7,123 cases of counterrevolution (again accounting for many more defendants, of whom only a tiny handful would have been acquitted).[98] But by the mid-1980s, the annual numbers of sentenced counterrevolutionaries were down to single digits in many Chinese cities. Foshan Municipality in Guangdong Province, for example, had tried and sentenced 1,861 such cases in 1951; 2,165 in 1955; 3,298 in 1959; 178 in 1972; and 275 in 1976. During the entire nine-year period from 1979 until 1987, however, a total of only forty-seven cases of counterrevolution were tried by the Foshan court system, representing an average of 0.5 percent of all the criminal cases tried by local municipal courts during those years.[99]

From 1993 onward, the Chinese government for the first time began issuing annual and semi-annual statistics on the total numbers of counterrevolutionary prisoners currently being held in China's prison system, and also for the period dating back to late 1988. The following selection from these data, which refer to total numbers of sentenced counterrevolutionaries being held in Ministry of Justice-run prisons throughout China, suffices to show the overall trend claimed by the judicial authorities:

Table 1

At Year-End	Nos. of CR Prisoners	CRs as % of total
1988	6,935	0.65 percent
1990	5,084	n.a.
1991	4,329	n.a.
1992	3,651	0.27 percent
1993	3,036	0.24 percent
1994	2,678	n.a.
1997 (April)	2,026	n.a.

[98] *Dangdai Zhongguo de Shenpan Gongzuo* (*Judicial Work in Contemporary China*), Vol.1 (Contemporary China Publishing House, 1993). According to this book, the figure of 7,123 counterrevolutionary cases accounted for 0.43 percent of all criminals sentenced during the period in question.

[99] *Foshan Shi Fayuan Zhi* (Annals of the Foshan Municipal Courts), compiled and published by the Foshan Municipal Intermediate Court (year of publication not known -- probably 1988 or 1989).

Since the Chinese government does not permit any independent monitoring of conditions within the country's prison system, there is no way of checking on the figures. They may exclude most counterrevolutionaries held in prisons and labor camps within the autonomous regions of Xinjiang and Tibet, and they certainly exclude those held in facilities run by the Public Security Bureau such as Qincheng Prison, together with all political prisoners sentenced without trial to terms of administrative detention under reeducation-through-labor. Most significantly, perhaps, the official figures fail to take into account any of the apparently quite large numbers sentenced to death each year for counterrevolutionary offenses and then executed. As noted above, all but two of the main criminal charges of this type were punishable by death in the 1979 criminal code, and the ultimate penalty has been applied with particular frequency in the case of those convicted under Article 99 of the criminal code of "organizing and using a reactionary sect or society to engage in counterrevolutionary activities."[100]

Even taking the above circumstances into account, however, the recently released year-end total figures for 1988 to 1994, which refer to individuals, appear to be fundamentally inconsistent with a variety of other official statistics. (See, for example, Appendix D below for an analysis of the total numbers in comparison with some twenty cases of counterrevolution from the early 1980s involving a total of 144 defendants.) In short, it appears likely that figures provided by the Chinese authorities for the numbers of imprisoned counterrevolutionaries in China during the period 1988-94 may represent a significant underreporting of the real dimensions of the problem.

An analysis of the changing composition of sentenced counterrevolutionaries since the early 1980s—that is, the relative proportions of those convicted of the various types of counterrevolutionary offenses at different stages during that period—reveals a striking trend. Between 1980 and 1991, the proportion of sentenced counterrevolutionaries who were convicted of "counterrevolutionary propaganda and incitement" under Article 102 rose steeply. According to one authoritative account, the average incidence of Article 102 offenses as a proportion of all counterrevolutionary crimes during the decade or so in question was "approximately 20 percent."[101] By 1990, however, an official law journal noted: "During the most recent period, counterrevolutionary propaganda and incitement cases have accounted for around 80 percent of all the counterrevolutionary cases accepted and dealt with by the people's courts."[102]

[100] See Section IV above for details on the changes made in the new criminal code on these issues.

[101] *Xingshi Fanzui Anli Congshu (Fan'geming Zui) [Criminal Case-Studies Series (Vol.1: Crimes of Counterrevolution)]*, compiled by the Supreme People's Procuratorate and published by *Zhongguo Jiancha Chubanshe* (Beijing), November 1992. According to the same source, the incidence of counterrevolutionary crimes as a percentage of all criminal offenses committed during the period 1980–89 varied from between 0.08 percent and 0.8 percent; and "even in the highest year, it did not reach 1 percent of the total."

[102] See Li Li and Li Shaoping, *"Lun Fan'geming Xuanchuan Shandong Zui de Rending"* ("On the Determination of Crimes of Counterrevolutionary Propaganda and Incitement"), *Xiandai Faxue [Contemporary Jurisprudence]*.

Detailed statistics for the period 1988–91 confirm this overall dramatic increase in the proportion of purely freedom of expression-related counterrevolutionary offenses:[103]

Table 2

	Total # of new CR cases brought to trial	Article 102 cases	Article 102 cases as percentage of total
1986	386	n.a.	n.a.
1987	277	n.a.	n.a.
1988	214	54	25 percent
1989	572	386	67 percent
1990	716	492	69 percent
1991	413	354	86 percent

Lest any doubts remain that the types of activities proscribed and punished in recent years under Article 102 were ones almost exclusively involving Chinese citizens' peaceful exercise of their internationally guaranteed right to freedom of expression, the following authoritative legal definition of such offenses should be quoted in full:

> The main forms of expression [of the crime of counterrevolutionary propaganda and incitement] are in essence four-fold: 1) shouting counterrevolutionary slogans in public, and making counterrevolutionary speeches; 2) writing, posting up or distributing in public places counterrevolutionary leaflets, banners and big- or small-character posters; 3) extensively mailing out counterrevolutionary-instigatory letters or threatening and alarmist letters to [government] organs, [social] bodies, and universities or colleges; and 4) editing and issuing reactionary publications and publishing counterrevolutionary articles. The first two of these four categories...account for two-thirds of all cases of counterrevolutionary incitement.[104]

[103] The 1986 figure appears in Zhao Bingzhi and Bao Suixian (see previous footnote citation); the 1987 figure comes from *Zhongguo Jiancha Nianjian, 1988 [China Procuracy Yearbook, 1988],* China Procuracy Press, Aug. 1989—unusually, this source specifies the number of actual defendants involved in the 277 cases, namely a total of 501 persons; the figures for 1988–91 are taken from the relevant annual editions of the *Renmin Fayuan Nianjian [People's Courts Yearbook]*, People's Court Press, Beijing, and the percentages in the final column were calculated by the authors of the present report.

[104] *Xingshi Fanzui Anli Congshu (Fan'geming Zui) [Criminal Case-Studies Series (Vol.1: Crimes of Counterrevolution)]*, compiled by the Supreme People's Procuratorate.

Another legal article adds to the above definition of Article 102 offenses: "...openly organizing sessions for people to listen to Voice of America and other foreign radio stations that attack the Chinese government and spread venomous rumors." Significantly, the same source goes on to state: "The question of whether or not those subjected to propaganda and incitement are actually instigated to carry out any counterrevolutionary acts themselves has no bearing at all on the determination of this offense."[105] In other words, it was the mere act of expression that was penalized under the former Article 102, regardless of the consequences — or complete absence thereof — for China's "state security." This legal framework for the suppression and punishment of acts of free expression has remained fundamentally unaltered in the country's revised criminal code, despite the ubiquitous replacement of the old term "counterrevolution" by the new concept of "endangering state security." In fact, those sentenced under the old counterrevolution clauses now appear to be having their crimes redefined to fit the new law. As a Ministry of Justice official put it on April 1, 1997: "In China, counterrevolutionary prisoners are not political prisoners, they are prisoners who have endangered national security or have conducted activities to overthrow the political power of China."[106]

Proposal for Establishment of a "Commission of Review"

This dismal history, and the list of individuals imprisoned in China for political crimes over the last year and a half that is appended below, demonstrate not only the need for immediate legislative action to change the existing laws in this area, but also the pressing and critical need for the establishment of an independent commission to review the cases of all people currently imprisoned on the grounds of counterrevolutionary, secrets-related, or "state security" offenses.

Numerous precedents exist, both inside and outside China, for such an action by the government.[107] As mentioned above, China already has an extensive bureaucratic structure for reassessing wrongful convictions whenever a previous leadership group's political line has been determined to be erroneous. But existing mechanisms do not offer the likelihood of the kind of comprehensive public review of individual cases that is so urgently required, and which might provide the catalyst for a final repudiation by the Chinese authorities of the use of law as a weapon against political dissent. Such a fundamental and far-reaching purpose would be much better served by a special Commission of Review, of the kind, for example, that can be established by the National People's Congress under the authority of the 1982 PRC Constitution. According to Article 71 of the latter:

> The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of enquiry into specific questions and adopt relevant resolutions in the light of their reports. All organs of state, public organizations and citizens concerned are obliged to supply the necessary information to those committees of enquiry when they conduct investigations.

[105] Li Li and Li Shaoping, "Lun Fan'geming Xuanchuan...," *Xiandai Faxue*.

[106] See "China says no political prisoners, defends rights," Reuters, March 31, 1997.

[107] To cite just one recent example from another Asian country: on August 11, 1992, following the repeal of a whole series of restrictive laws, President Fidel Ramos of the Philippines issued an order authorizing the nationwide review of all cases of political imprisonment dating from the time of the Marcos dictatorship. The document, titled, "Guidelines for the Grant of Bail, Release or Pardon of Persons Detained or Convicted of Crimes Against National Security and Public Order, and Violation of the Articles of War," specified in detail the process whereby all such detainees could apply for their release. At the apex of the process stood a Presidential Committee; detainees had to file a motion for bail with the local court and provide a copy to the local provincial or city subcommittee of the Presidential Committee; within a specified time period, the various subcommittees then had to make their recommendations to the committee, which in turn had to submit periodic lists of candidates for release to the president for his final decision. There were many unclear and unsatisfactory aspects to the process, not least of which was that, in many cases, those concerned were released on bail without being pardoned or even, technically, having the cases against them dismissed. But at least they were freed.

The first to be freed should be all prisoners convicted and currently imprisoned solely under Articles 98, 99 and 102 of the old criminal code, since those statutes proscribed acts involving only the exercise of the internationally-protected rights to freedom of expression and association. According to Article 80 of the Constitution, the power to issue "special pardons" (*te she*) is vested in the state president (currently, Jiang Zemin) pursuant to decisions of the NPC.[108] Human Rights in China and Human Rights Watch/Asia urge President Jiang to exercise such authority, on behalf of the abovementioned three categories of counterrevolutionary prisoners, on the occasion of China's resumption of sovereignty over Hong Kong on July 1, 1997. Such a move, in addition to the obvious benefits for those concerned, would send a reassuring message to the people of Hong Kong and help to dispel the widespread anxiety about the future of civil liberties and human rights in the former British colony.

With a view to completing its work before October 1, 1999, (the fiftieth anniversary of the founding of the People's Republic of China), the Commission of Review could then supervise the investigation, by a series of local subcommittees established and mandated by the various People's Congresses at provincial and municipal levels, of the case files of all other counterrevolutionary, secrets-related, or "state security" prisoners. The major precedent for such an action in China would be the September 1959 special pardon granted by the NPC Standing Committee, upon Chairman Mao's initial suggestion and President Liu Shaoqi's executive decree, of not only thousands of KMT and Japanese prisoners of war ("war criminals") but also many thousands of sentenced counterrevolutionaries and even larger numbers of common criminals, in order to commemorate the tenth anniversary of the People's Republic.[109] Similar partial amnesties were carried out in December 1961 and March 1963; and on March 17, 1975, a general amnesty was declared by the NPC Standing Committee for all remaining prisoners of war throughout the country. As part of the latter operation, Deng Xiaoping was reported in October 1975 as having personally ordered that 3,000 former KMT officers of county or regimental rank and above — that is, a figure considerably higher than the total number of sentenced counterrevolutionaries officially said to be now held in jails throughout China — be promptly released from prison.[110]

In short, extensive special pardons have been announced by either the NPC or top leaders since 1949. The same can therefore be done once again, and the recent expunging of the term "counterrevolution" from the criminal code would seem to provide the government with the most appropriate possible moment for performing such an act of clemency.

The proposed comprehensive review of the cases of all persons currently imprisoned on charges of counterrevolution or similar offenses should be carried out, in the first instance, by local review committees made up of legal, judicial, medical, religious and other relevant professionals, together with grassroots representatives of the local community. Their findings in each case should be relayed to the Review Commission at central level, which would in turn be responsible for compiling lists of qualified candidates for eventual inclusion in one or more special pardons authorized by the NPC and enacted by presidential decree. The entire process should be conducted in an open and

[108] Article 80 of the 1982 Constitution of the PRC reads: "The President of the People's Republic of China, in pursuance of decisions of the National People's Congress and its Standing Committee, ... issues orders of special pardons...."

[109] The information in this section is drawn from a series of contemporary official documents contained in an "internal use only" volume titled *Xingshi Shensu Huilan (Documentary Sourcebook on Criminal Petitions),* Jilin People's Press (April 1990). Significantly, the threshold criteria for the release of counterrevolutionary prisoners were considerably higher than those for ordinary criminals. According to a presidential proclamation issued on September 17, 1959, the Second NPC Standing Committee decided at its ninth session that all counterrevolutionaries sentenced to five years or less who had already served more than half of their sentences, and also those sentenced to more than five years who had already served more than two-thirds of their sentences, would be eligible for a special pardon and release if they had in addition "genuinely abandoned their evil ways and become good people" (*queshi gai'e congshan*). For common criminals, by contrast, such treatment could be won after the completion of only one-third of a sentence of five years or less, or of one-half of a sentence of greater than five years, in addition to the requisite display of remorse.

[110] Curiously enough, despite this 1975 general amnesty, a further series of official government decrees needed to be issued in 1982 calling for the final release of all former KMT officials of below county or regimental commander ranking.

transparent fashion, with public access to all relevant trial and appeal documents being made available to independent outside monitoring groups, family members and concerned individuals.

Both the United Nations and foreign governments should seek to assist in the effort by, for example, offering qualified personnel to monitor the application of international judicial standards and to help in the evaluation of individual case files. In the meantime, the Chinese authorities should grant prompt access to all counterrevolutionary and other political detainees to the International Committee of the Red Cross. All prisoners ultimately found to have been convicted and held solely on account of their peaceful views or activities should be freed no later than October 1, 1999. In this way, the People's Republic would be able to embark upon its second half-century of existence substantially relieved of the taint of political persecution and imprisonment which has for so long disfigured its image in the eyes of the international community.

VII. CONCLUSION

While such crimes as "sedition," "subversion" and "treason" are still on statute books in countries around the world, a growing body of informed opinion finds such concepts incompatible with basic human rights principles. For example, faced with a bill introduced by the British Hong Kong government defining the offenses of subversion and secession, some Hong Kong legislators have concluded that any definition could potentially be used to suppress freedom of expression.[111] "After several discussions in the bills committee," said legislator Margaret Ng, an independent representative and a prominent lawyer, "we have failed to find any formulation of these offenses which does not endanger the rights and freedoms of Hong Kong people."[112] She and a number of other legislators, along with the Hong Kong Journalists Association, now believe Article 23 of the Basic Law should be amended or repealed.

Unfortunately, the international community has failed to create universal standards to protect human rights in the face of national security rhetoric, despite repeated calls from NGOs and human rights experts to do so. The Johannesburg Principles were an effort to enact workable standards, based on existing international human rights documents as well as positive precedents set by courts around the world, to address this serious deficiency in international human rights law.

Human rights experts and nongovernmental organizations (NGOs) have identified the use of national security as a rationale for restricting fundamental human rights and freedoms as a pernicious trend, which has become particularly pronounced in Asia in the past few decades. For this reason, Asian NGOs have been particularly active in this area. At the 1993 World Conference on Human Rights in Vienna, over eighty-five NGOs from around the world endorsed a resolution calling for an end to the trend of putting the security of the state before the security and well-being of its citizens at a symposium on "National Security vs. People's Security in Asia." In 1995, the Korean Human Rights Network hosted an International Conference on National Security Law in the Asia-Pacific. In 1996, the Asia-Pacific Human Rights NGO Congress passed a resolution calling on all governments in the region to demanding that the governments of the Asia-Pacific region repeal national security laws authorizing violations of fundamental human rights and freedoms, and calling for the appointment of a special rapporteur to monitor this issue, an idea first proposed by the Robert F. Kennedy Memorial Center for Human Rights in 1993.

U.N. Special Rapporteur on States of Emergency Leandro Despouy highlighted the abuse of national security justifications for the suppression of basic rights in reports to the U.N. Commission on Human Rights in 1994. His report stated:

[111] As noted above, under Article 23 of the Basic Law, the Hong Kong SAR "shall" enact legislation embodying the prohibitions in the article. In an effort to ensure that the offenses in question are defined in a way which makes violence, or the incitement to violence, an essential element of any such crime, the British Hong Kong government has introduced an amendment to the Crimes Ordinance on this issue, and the bill is currently being considered by the Legislative Council.

[112] See "Charges 'A Tool of Suppression'," *South China Morning Post*, April 2, 1997.

> Such a misuse of law, which is daily becoming more frequent, even in countries with a long-standing democratic tradition, is particularly serious when it takes the form of criminal laws or procedures applicable under normal circumstances. The most common spheres of such legislation are State security (and more particularly anti-terrorist legislation), the campaign against drug trafficking, provisional arrest, occasionally questions relating to publications, and quite recently, questions of immigration....
>
> A particularly disturbing development is that these laws introduce, under normal circumstances, restrictions on rights which may be suspended only during formally declared states of emergency. What is more, the ordinary legislation in question occasionally affects even inalienable rights from which no derogation is possible, even under exceptional circumstances.[113]

The special rapporteur noted with concern that since he was only mandated to examine declared states of emergency, such provisions were generally beyond the scope of his jurisdiction, and called on other U.N. special rapporteurs and working groups to take up the issue.

The material in this report amply demonstrates that the concept of state security is being misused in the People's Republic of China in precisely this way. Ironically, in using this rationale of protecting the "security" of the state as a justification for the suppression of dissent, China is associating itself with a model which originated from a combination of colonial-era laws and Cold War rhetoric and actions. This model, which some activists have argued puts national security before human security, was further developed by Asian governments, such as Taiwan, South Korea, Malaysia and Singapore, as part of their anti-communist campaigns. The main targets of such repression ― critics of the regime in question, human rights activists, independence movements, religious dissenters and labor organizers ― are also the principal objects of China's new state security laws.

But as Wang Dan foresaw in the commentary he wrote following the 1994 enactment of the Detailed Implementation Regulations for the State Security Law, such laws serve only to further narrow the political space available to *all* Chinese citizens. "As the contradictions in society accumulate and sharpen," Wang wrote, "the use of such repressive measures is not only unreasonable but also harmful. When all the channels available for the expression of political opposition in open, legal fashion are closed, such political forces which already exist will merely be forced to participate politically in secret and illegal ways. In terms of social stability and progress, the disadvantages of this greatly outweigh any possible benefits."[114] Dissidents are only the most obvious target of such laws; the repressive effects of the counterrevolution statutes have always been felt far beyond the confines of the community of people recognized internationally as "dissidents."

[113] Annual Report of the Special Rapporteur on States of Emergency, E/CN.4/sub.2/1994/23, paragraphs 39 and 40.

[114] "Tightening the Net Around Dissidents," by Wang Dan, *China Rights Forum*, Winter 1994.

Human Rights in China
Human Rights in China (HRIC), established in 1989, is a non-profit organization independent of any political groups or governments. HRIC's work involves collecting information about and publicizing human rights violations in the People's Republic of China, informing Chinese people about their rights as defined in international human rights instruments, and assisting those in China who have suffered persecution and imprisonment for the non-violent exercise of their fundamental rights and freedoms. Liu Qing is the chair; Li Xiaorong is the vice chair; Fu Xin-yuan is the founder and treasurer; Xiao Qiang is the executive director; Wang Yu is the research director; Sophia Woodman is the press director; Mark Goellner is the program officer; Béatrice Laroche is the UN Liaison.

Web Site Address: http://www.igc.apc.org/hric

Human Rights Watch/Asia
Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Robert Kimzey, publications director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Susan Osnos, communications director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Asia division was established in 1985 to monitor and promote the observance of internationally recognized human rights in Asia. Sidney Jones is the executive director; Mike Jendrzejczyk is the Washington director; Robin Munro is the Hong Kong director; Patricia Gossman is the senior researcher; Zunetta Liddell is the research associate; Jeannine Guthrie is NGO liaison; Mickey Spiegel is a consultant; Paul Lall and Olga Nousias are associates. Andrew J. Nathan is chair of the advisory committee and Orville Schell is vice chair.

Web Site Address: http://www.hrw.org
Gopher Address: gopher://gopher.humanrights.org:5000/11/int/hrw
Listserv address: To subscribe to the list, send an e-mail message to majordomo@igc.apc.org with "subscribe hrw-news" in the body of the message (leave the subject line blank).

APPENDIX A: RECENT CASES OF POLITICAL IMPRISONMENT

The following is a list of individuals sentenced to prison under the counterrevolution articles of the criminal code or sent to serve administrative labor camp sentences under Reeducation Through Labor since the December 1995 prosecution of Wei Jingsheng. Wei's trial appeared to mark a distinct shift in the characterization of political dissent towards the "state security" rhetoric described in this report. This is only a partial list — it only includes one case from Tibet, for example, where many people were sentenced or sent to Reeducation during this period[1] — but it shows clearly that the suppression of dissent actually intensified in the run-up to the promulgation of the revised criminal code in March 1997. The new law failed to abolish long-term administrative detention under Reeducation Through Labor, a punishment meted out at the discretion of the police which the U.N. Working Group on Arbitrary Detention found to be inherently arbitrary. This measure has been increasingly used against dissidents in recent years.

1. Convicted on Counterrevolutionary Charges

Chen Xi, 42, a lecturer at Guizhou Jinzhu University, was sentenced in early or mid-1996 to ten years' imprisonment and five years' deprivation of political rights for "organizing and leading a counterrevolutionary group." In May 1995 he initiated an "Open Letter to the Chinese Communist Party Central Committee" which called for democratic reform, respect for human rights, and the release of political prisoners. On May 26 he was detained by the Guiyang Public Security Bureau. Officers told Chen's family that he was being held under "Shelter and Investigation," a form of effectively indefinite administrative detention decided at the discretion of the police, but provided no written notification until announcing his formal arrest on August 16.

Chen was tried and sentenced together with associates Huang Yanming, Liao Shuangyuan, Lu Yongxiang and Zeng Ning (see below). The verdict states that all of them "aimed to subvert proletarian dictatorship and the socialist system" and "schemed to subvert the leadership of the Chinese Communist Party." The fates of at least seven other Guiyang activists apprehended in 1995 in connection with the open letter — Chen Zongqing, Hu Kangwei, Tao Yuping, Wang Jun, Wang Quanzheng, Xu Guoqing and Yi Hua — are still unknown.

Chen Xi served a three-year term for "counterrevolutionary propaganda and incitement" for his role in the 1989 Guiyang democracy movement.

Guo Baosheng (see Li Wenming, below)

Hada, 41, owner of the Mongolian Studies Bookstore in Hohhot, Inner Mongolia, was sentenced in 1996 to fifteen years' imprisonment for his role as founder and chair of the Southern Mongolian Democratic Alliance (SMDA), a group which called for increased autonomy in Inner Mongolia and respect for the rights and culture of China's minority peoples. Hada was taken from his home in December 1995 during a crackdown on Inner Mongolian democracy and autonomy activists and was originally held in the Inner Mongolia Public Security detention center under Shelter and Investigation provisions before being formally arrested in March 1996, when he was charged with "conspiring to subvert the government," "spying," and "splitting the country."

Hada is currently imprisoned in Inner Mongolia's No.1 Prison along with fellow SMDA leader Tegexi (see below). Hada was an active participant in the Mongolian student movement of 1981 while a doctoral candidate in the history department of Inner Mongolia Normal University.

Huang Xiuming, 33, an unemployed businessman, was sentenced in January 1997 in Hefei, Anhui Province, to one year's imprisonment for "counterrevolutionary propaganda and incitement." At issue were five articles which Huang, together with Ma Lianggang and Shen Liangqiang (see below), wrote, printed and distributed to universities and the local press in Hefei in 1991. In these articles the authors predicted great social change in China, analyzed past political events in the Soviet Union and called into question the secureness of Jiang Zemin's grip on power; according to the indictment, these articles "aimed to subvert the government and the socialist regime." At the sentencing the court

informed Huang that if he did not appeal he would not be required to serve any more time, as the 17 months he spent in detention from his apprehension in spring 1992 to his release on bail in September 1993 would be counted toward his sentence. No explanation was given for the lengthy delay in bringing the case to trial.

Huang Yanming, 35, a manager at the Guiyang Yunhai Ornament Company, was sentenced in early or mid-1996 to five years' imprisonment and four years' deprivation of political rights for "actively participating in a counterrevolutionary group" and "counterrevolutionary propaganda and incitement." On June 4, 1995, Huang, together with Lu Yongxiang (see below), distributed in Beijing's Tiananmen Square a pro-democracy petition letter to Party leaders which the two had written together with Chen Xi and other Guiyang activists. Huang and Lu were apprehended on the spot by plainclothes police; later Huang was transferred to the Guiyang Municipal Public Security detention center.

Li Hai, 42, a student leader in the 1989 democracy movement, was convicted on December 18, 1996, of "prying into and collecting the following information about people sentenced for criminal activities during the June Fourth 1989 period: name, age, family situation, crime, length of sentence, location of imprisonment, treatment while imprisoned." The court stated in its verdict that this information was "high-level state secrets" and sentenced Li to nine years in prison and two years' deprivation of political rights.

Li was detained on May 31, 1995, accused of hooliganism and held incommunicado in the Beijing Chaoyang District Detention Center for almost a year before he was formally arrested on April 5, 1996, and indicted on new charges of "leaking state secrets." In his trial on May 21, which family members were barred from attending, his lawyer contested the charge on the grounds that since Li was not a government employee, he had no access to state secrets. The court ultimately conceded that Li did not "leak" state secrets but nonetheless gave him a heavy sentence for "prying into and gathering" them.

As a graduate student in philosophy at Beijing University, Li participated in the 1989 protests. In 1990, he spent six months in detention without charge for putting up posters on the Beijing University campus to commemorate the first anniversary of the massacre. He was expelled from the university after his release. Li was a signatory of the May 1995 "Draw Lessons from Blood" petition and an initiator of the 1993 "Peace Charter" movement. From 1991 to 1995 he conducted the most comprehensive effort yet to document the fates of hundreds of unknown Beijing residents punished in the June Fourth crackdown.

It is not known where Li Hai is currently imprisoned. His family has not been permitted to see him since his 1995 detention.

Li Wenming and **Guo Baosheng**, 28 and 25, are currently awaiting sentencing for the crime of "conspiracy to subvert the government" following their conviction in a several-times postponed trial in November 1996. The minimum sentence for this crime is 10 years imprisonment. Li and Guo have been in detention since May and June 1994 respectively.

Both were working in Shenzhen when Li, a former student activist from Hunan Province, and Guo, a Qinghai native who had studied philosophy in Beijing, became involved in initiatives to organize migrant workers in the area and to inform them about their rights. They talked about setting up two organizations, the Federation of Hired-Hand Workers and the Joint Association of Hired Hand Workers, which they intended to register with the local civil affairs bureau. They organized a number of open air discussion groups for migrant workers at which such matters as the value of collective bargaining and international labor rights standards were raised, and eventually set up a "workers' night school," as well as offering legal advice and other assistance to individuals who were having difficulties with their employers. The group also published several mimeographed newsletters containing information for migrant workers.

Other charges in the indictment against the two men involved their discussing the political situation small study groups with friends, and circulating dissident writings in their circle, including essays by Wei Jingsheng. The procuracy also emphasized their group's foreign connections, which appear to have consisted of receiving some visitors from

labor-related groups in Hong Kong and at least one press interview. However, there is no evidence that either Li or Guo were working with any of these groups or individuals.

A number of other people associated with the group have, according to the indictment, been "dealt with" separately. They include: Kuang Lezhuang, Fang Yiping, He Fei, Zeng Jiecheng, Lan Chunquan, Wu Chun and Liu Hutang. Most are reported to have to have been released after serving Reeducation terms.

Liao Shuangyuan, 43, a security section cadre at the Guizhou Bearing Plant, was sentenced in early or mid-1996 to four years' imprisonment and four years' deprivation of political rights for "actively participating in a counterrevolutionary group." In May 1995 Liao joined Chen Xi and other Guiyang activists in a pro-democracy petition letter campaign (see above).

Liao spent three years in a Reeducation Through Labor camp after being accused of "counterrevolutionary propaganda and incitement" for his involvement in Guiyang's 1989 democracy movement.

Lu Yongxiang, 50, a businessman, was sentenced in early or mid-1996 to five years' imprisonment and four years' deprivation of political rights for "actively participating in a counterrevolutionary group" and "counterrevolutionary propaganda and incitement." On June 4, 1995, Lu, together with Huang Yanming (see above), distributed in Beijing's Tiananmen Square a pro-democracy petition letter to Party leaders which the two had written together with Chen Xi and other Guiyang activists. Lu and Huang were apprehended on the spot by plainclothes police; later Lu was transferred to the Guizhou Provincial Public Security detention center.

A veteran dissident, Lu participated in pro-democracy organizations and publications in the 1979 Guizhou Democracy Wall movement. He was sentenced to three years' imprisonment for "hooliganism" in the 1983 "Strike Hard" campaign.

Luo Changsong, 43, a cadre in the Beijing Letters and Visits Office of the National People's Congress originally from Chengdu, Sichuan Province, was sentenced on November 11, 1996, to six years in prison for "counterrevolutionary propaganda and incitement." The court's verdict states that in 1992 Luo wrote "A Manifesto on Peaceful Evolution" declaring that the Four Basic Principles should be changed to Democracy, Freedom, Equality and Fraternity, and at the same time called for the launching of a "Peaceful Evolution" movement. The verdict found Luo guilty of sending his manifesto and other essays to "people and organizations outside of the mainland" during the period from February to May 1996, in order to enlist their cooperation in launching a "Peaceful Evolution" movement. However, the verdict does not give any information about these outside people and organizations. It concluded that Luo's actions represented "a plot to subvert the people's democratic dictatorship and the socialist system" and constituted "a major crime posing a grave threat to society which must be punished severely." Luo appealed against his sentence, but the court rejected his appeal on December 12, 1996, without a hearing.

Luo was detained on May 21, 1996, and held in the State Security Bureau detention center in Beijing. He was formally arrested ten days later.

Ma Lianggang, 35, a former Anhui university official, was found guilty of "counterrevolutionary propaganda and incitement" at the same December 1996 trial as fellow activists Huang Xiuming (see above) and Shen Liangqing (see below) and sentenced in January 1997 to three years' deprivation of political rights for his role in drafting, printing, and distributing "subversive" pamphlets in Hefei, Anhui Province, in 1991.

Like Huang and Shen, Ma was detained in spring 1992 and released on bail in September 1993. In addition, Ma was subjected to repeated short-term detention during the period from his 1993 release to the 1996 trial.

Ngawang Choepel , 29, a well-considered musician and ethno-musicologist, was sentenced by the Shigatse Intermediate People's Court to an 18-year prison term in late December 1996 on charges of "espionage." Official reports

have said Ngawang was collecting information for "an organization of a certain foreign country," elsewhere identified as the United States, and for the "Dalai Lama Clique." He was accused of using the cover of making a documentary on traditional dance and music in Tibet to "gather sensitive intelligence and engage in illegal separatist activities."

The Chinese authorities have not issued any further information on what actions brought Ngawang such an extreme sentence. Two recent reports have announced that he is appealing the sentence, but no hearing is yet known to have been held. The verdict in his case has not been made public, and has not been sent to his family members, who live in India. The only "evidence" official reports have referred to is Ngawang's alleged confession of a plan for "spying activities," which apparently consists of a list of Tibetan prefectures he was going to visit. Ngawang was making a documentary about folk music in Tibet, for which he had received a grant, but had not applied for nor received official permission to film there.

Ngawang was born in Tibet, but lived in India since the age of two. He won a Fulbright scholarship and studied in the United States for several years, and subsequently returned to India. In September 1995 while visiting Tibet to film his documentary, Ngawang disappeared. A detainee released later reported seeing Ngawang being brought into the detention center in Shigatse after being picked up with a videocamera in the market in the city, where he had attracted attention. Despite repeated inquiries, the Chinese authorities did not admit that they were holding Ngawang until late 1996.

Shen Liangqing, 33, a former public prosecutor, was found guilty of "counterrevolutionary propaganda and incitement" at the same December 1996 trial as fellow activists Huang Xiuming and Ma Lianggang (see above) and sentenced in January 1997 to 17 months' imprisonment for his role in drafting, printing, and distributing "subversive" pamphlets in Hefei in 1991.

The court informed Shen that he, like Huang, would not be required to serve any more time provided that he did not appeal, as the 17 months that he spent in detention from his spring 1992 detention to his September 1993 release on bail would be counted toward his sentence.

Tegexi, 30, an official in the Inner Mongolian Foreign Affairs Bureau's Division of Russian and Mongolian Affairs, was sentenced in 1996 to ten years' imprisonment for "organizing a counterrevolutionary group." Tegexi helped found the Southern Mongolian Democratic Alliance (see Hada, above).

Tegexi was away from his Hohhot home on business when the police raided it during the December 1995 crackdown in Inner Mongolia, but two days later the police escorted him back to Hohhot and detained him under Shelter and Investigation in the Inner Mongolia Public Security Bureau Detention Center until his formal arrest in March 1996. He is currently serving his sentence with Hada in Inner Mongolia's No.1 Prison.

Wang Dan, 28, one of the principal student leaders of the 1989 democracy movement, was sentenced on October 30, 1996, to eleven years' imprisonment and two years' deprivation of political rights for "conspiring to subvert the government." Wang's "crimes" included: joining with others to express his views on democracy and freedom of expression; criticizing the government in articles published in Hong Kong and Taiwan; accepting a scholarship from a U.S.-based exile organization for a distance learning course from the University of California at Berkeley; and raising money to support needy dissidents and their families.

On May 21, 1995, Wang was taken from his home shortly after initiating the "Draw Lessons from Blood" petition and signing the "Tolerance" petition. The authorities then held him for almost 17 months without notifying his family, revealing to them his whereabouts, or permitting them any contact. Throughout this period, the government claimed that Wang was merely under "residential surveillance," which is supposed to be a form of house arrest.

Wang's "disappearance" came to an end on October 10, 1996, when the authorities notified his family that they had one day to find Wang a lawyer. Because Wang requested that his mother serve, along with a professional lawyer, as

his defender, both were permitted to see Wang for about an hour on October 14 ─ the only visit with Wang allowed since his May 1995 detention, and the only visit allowed in the two short weeks given to prepare the defense case.

The entire trial lasted less than four hours; only half an hour after the verdict was read, the state-run Xinhua News Agency had already released a three-page interview with the presiding judge detailing the "open, fair and legitimate" character of the trial. In fact, police barred foreign press, legal observers, and most of Wang's relatives from attending. Wang's subsequent appeal was rejected in a ten-minute hearing on November 15.

Wang spent almost four years in prison following the June Fourth crackdown. After his release on parole in February 1993, Wang continued to speak out for democracy and human rights, writing articles and speaking with journalists. During his period of "freedom" he faced continual harassment, restrictions on movement, and repeated detention, and even received death threats from police officers.

Wang is currently over ten hours' train journey from Beijing in Liaoning Province's Jinzhou Prison. Contrary to normal practice, Wang's time in incommunicado detention is not being counted toward his sentence. A doctor who examined him recently acknowledged that Wang is suffering from prostatitis and chronic pharyngitis, and that the prison lacks the appropriate treatment facilities.

Wei Jingsheng, 46, China's most prominent dissident, was sentenced on December 13, 1995, to fourteen years' imprisonment and three years' deprivation of political rights for "conspiring to subvert the government." Wei's "conspiracy" consisted of "communicating with hostile foreign organizations and individuals, amassing funds in preparation for overthrowing the government and publishing anti-government articles abroad." At his trial Wei freely admitted corresponding with international human rights organizations, making plans to provide financial assistance to victims of the June Fourth Massacre and their families and writing and publishing articles critical of the government, but denied that such peaceful exercise of his rights to freedom of expression and association constituted criminal activities.

The court informed Wei's family of his December 1 indictment on December 3 but refused to reveal its concrete contents, giving them little time to find a lawyer and prepare a defense against charges. Less than twenty-four hours before the trial his attorneys were permitted to peruse the court's 1,996-page case dossier. The supposedly open courtroom was packed with a hand-picked audience and closed to international observers, reporters and Chinese citizens who applied for permits to attend. Wei appealed his conviction but his petition was rejected in ten minutes on December 28. For the appeal, the lawyers had only ten hours to look at the dossier.

Active in the Democracy Wall movement of the late 1970s and sharply critical of Deng Xiaoping, Wei was arrested in 1979 and sentenced to fifteen years in prison. He was released six months early, in September 1993, as part of China's effort to improve its international image in its bid for the 2000 Olympic Games. Upon his release, Wei immediately began speaking out and publishing articles on the need for democratic change. He was detained when traveling between Tianjin and Beijing on April 1, 1994, a little less than a month after meeting with U.S. Assistant Secretary of State John Shattuck. From that point until he was formally arrested on November 21, 1995, Wei "disappeared." As in the case of Wang Dan (see above), Wei's twenty months in incommunicado detention were labeled "residential surveillance" and are not being counted toward his sentence.

Wei is currently in Jile No. 1 Prison in Tangshan, Hebei Province, where he spent the last four years of his first term. Prison conditions have exacerbated his heart condition, severe high blood pressure and arthritis, but officials have denied him treatment except for the traditional Chinese medicine sent by his family. During the most recent prison visit, in February, Wei's family discovered that he is also suffering from damage to his cervical vertebra.

Zeng Ning, 28, a corporate legal representative, was sentenced to two years' imprisonment and two years' deprivation of political rights for "actively participating in a counterrevolutionary group" for his involvement in Chen Xi's

pro-democracy petition letter campaign (see above). Zeng was apprehended on May 24, 1995; as in Chen Xi's case, public security officers told his family that he was being held under Shelter and Investigation.

Zeng spent four years in prison after writing the manifesto, "An Outline for Democratic Reform in China," in 1991.

Zhang Zong'ai, 56, a former local People's Congress representative and lecturer at the Xi'an Institute of Statistics, was sentenced in December 1996 to five years' imprisonment for "counterrevolutionary propaganda and incitement." The August 11 indictment accused Zhang of meeting with Wang Dan in Xi'an in September 1994 and providing him with "reactionary" material later published in a Hong Kong newspaper (Zhang called for democratic reform including a multi-party system, a general election and separation of powers); signing the May 1995 "Tolerance" petition; "pledging loyalty to Taiwan authorities" because of a private letter to the son of Chiang Kai-shek in which he wrote, "it is totally possible for us to realize thorough reform and walk toward democracy and prosperity like Taiwan"; and accepting funds from hostile overseas individuals and organizations. Zhang was detained on June 3, 1996, formally arrested on June 7 and tried on September 16.

Zhang was previously sentenced to five years' imprisonment for the same crime after participating in demonstrations in Xi'an in 1989 and writing a letter to the chairman of the National People's Congress protesting the June Fourth Massacre.

Zhang is in poor health. His leg and ribs, broken in an auto accident before his imprisonment, were never given proper treatment and still have not healed. He is reportedly suffering from serious psychological problems in prison.

2. Serving Reeducation Through Labor Terms

Chen Longde, 39, a former factory worker, was sentenced to three years' Reeducation sometime in mid-1996. Chen was detained in Hangzhou, Zhejiang Province, on May 28, 1996, after he, Wang Donghai (see below), Fu Guoyong (see below) and other Zhejiang activists drafted "An Open Letter to the National People's Congress on the Seventh Anniversary of June Fourth" calling for an official reassessment of the 1989 democracy movement, decrying rampant institutional corruption and demanding the release of all political and religious prisoners.

On August 17, 1996, shortly after he was sent to Luoshan Labor Camp, Chen leapt from a window to escape torture. A police officer admitted to Chen's father that he and a group of other officers had beaten Chen with electric batons and clubs in an attempt to force him to write a confession, and had encouraged Chen's fellow inmates to do the same. Sustaining two broken hips, a broken leg, and facial injuries in his fall, Chen was moved to Hangzhou Qingchun Hospital, a police facility, for treatment. On December 1 he was returned to prison still suffering from his injuries. Although he cannot walk, he must put in the required work hours at tasks which he can do while sitting. He is sharing a cell with twelve prisoners and is receiving no further medical treatment. Chen is reportedly also suffering from bronchitis and kidney stones.

Chen previously served a three-year sentence for "counterrevolutionary propaganda and incitement" after he distributed handbills during the 1989 protests. In 1995 and 1996 he was detained repeatedly for his involvement in pro-democracy petition campaigns, including a December 1995 petition calling for the release of Wei Jingsheng.

Fu Guoyong, 29, was sentenced to three years of Reeducation sometime after he was detained at his sister's business in Taiyuan, Shanxi Province, in July 1996. The police, who did not show a warrant, told his sister only that Fu was involved in "illegal political activities." A Zhejiang activist, Fu participated in Chen Longde's May 1996 petition to the National People's Congress (see above). Unable to find work at home because of these activities, Fu went to Taiyuan to work at his sister's company; while there, he distributed pro-democracy essays.

Fu previously served a two-year Reeducation term following the crackdown on the 1989 democracy movement. He was responsible for launching the dissident journal *Generation* in Zhejiang in 1988 and distributing it in Beijing in 1989.

Another dissident, **Chen Ping**, 49, helped Fu distribute pro-democracy essays in Taiyuan and was detained in August 1996 and sentenced to one year of reeducation through labor.

Gao Feng, 28, an employee of Chrysler's Beijing Jeep joint venture, was sentenced to two and a half years of Reeducation in October or November 1995. A core member of the Beijing Christian Sacred Love Association, an unofficial Protestant group, Gao was detained on August 8, 1995, during a crackdown on religious activists and other dissidents in the run-up to the U.N. Fourth World Conference on Women. That same day his home was searched and a copy of an appeal which he was drafting for 1989 student leader Liu Gang, then imprisoned, was confiscated.

Gao was previously apprehended with other religious dissidents in late May 1994 for publicly praying for those killed in the 1989 Beijing Massacre and for protesting the lack of democracy and human rights in China. Gao's case drew international attention when he was suspended by Beijing Jeep after his release in early July because he had "failed to ask for leave" while in detention. He was reinstated in August after international pressure on the Chrysler company.

Hu Kesi, editor of the Hong Kong-based magazine *Pacific Economy*, was detained in Shanghai in March 1996 and sentenced to three years of Reeducation. Hu had written articles on human rights and democracy and published them in his magazine. A veteran of the Shanghai Democracy Wall movement of the late 1970s, Hu was responsible for launching the dissident publication *Storm Petrel*.

Liu Fenggang, a Protestant activist in the Beijing Christian Sacred Love Association and the official Gangwashi church, was sent to serve two and a half years of Reeducation in October or November 1995. He was taken from his home in August 1995, around the same time that fellow activist Gao Feng was detained.

Previously, on November 23, 1994, Liu had been beaten up by police after he filmed a near-riot between Gangwashi churchgoers and the police after the Beijing Religious Affairs Bureau ordered the removal of the church's senior pastor, Yang Yudong.

In May 1995 Liu was questioned by the police several times in connection with his involvement in the pro-democracy petition campaign. On May 25, after he authored the petition "A Few Words on Behalf of the Ordinary People who are Suffering," he was detained overnight and warned not to speak out around the anniversary of June Fourth. Despite these orders, Liu helped organize mutual support groups for dissidents and continued to speak with foreign media.

Liu Nianchun, 48, a former factory worker and novelist, was sentenced to three years' Reeducation on July 4, 1996. Shortly after helping to initiate the pro-democracy petition "Draw Lessons from Blood" and signing another petition calling for "a spirit of tolerance in China's political life," Liu was seized at his home without a warrant on May 21, 1995. Liu then "disappeared" until the day his Reeducation sentence was announced, when his wife was informed that he had been sent to Beijing's Tuanhe labor camp.

Liu immediately attempted to sue the Public Security Bureau and the Reeducation Through Labor Commission but his application was rebuffed on various technicalities; after a protracted struggle and much international pressure, the court finally heard the case on September 17, 1996. Three months later the Beijing Chaoyang District Court announced its verdict rejecting Liu's suit, offering an argument based on state security: "[Citizens] must not engage in actions endangering national security, honor, or interests. Plaintiff Liu Nianchun . . . has engaged in activities which exceed constitutional and legal limits." In January 1997 Liu filed an appeal against this decision with the Beijing No.2 Intermediate Court.

Liu previously spent three years in prison for "counterrevolutionary propaganda and incitement" after participating in the Democracy Wall movement of the late 1970s. In 1993 he helped draft the "Peace Charter," and in 1994 he spent five months in detention without charge for attempting to establish the League for the Protection of the Rights of the Working People.

Liu is currently serving his term in the Shuanghe labor camp in Heilongjiang Province, a five-day train journey from Beijing. His long period of detention before his Reeducation term was announced has not been counted as time served, contrary to normal practice. Healthy when first detained, Liu is now extremely ill, suffering from a blocked intestine, rectal bleeding, mouth sores and chronic stomach pain.

Liu Xiaobo, 41, literary critic and a former professor of Chinese literature at Beijing Normal University, was detained at his home in Beijing on October 7, 1996, and sentenced the next day to a three-year Reeducation term. On September 30, together with Wang Xizhe, a veteran dissident from Guangzhou, Liu coauthored an open letter calling for a peaceful solution to the question of national reunification with Taiwan and for talks between the Chinese authorities and the Dalai Lama; asking that the Chinese Communist Party finally deliver on pledges of free speech and party pluralism; and pointing out that under China's constitution, President Jiang Zemin should be impeached for having recently claimed that the People's Liberation Army was under the "absolute leadership of the Party" rather than the National People's Congress, which is supposed to be the supreme organ of state power.

In July 1996 Liu wrote another open letter to the National People's Congress calling for freedom of speech and the press. In 1995 he spent more than seven months in detention without charge following his involvement in the May 1995 petition campaign.

Labeled a "black hand" behind the 1989 democracy movement, Liu spent 19 months in prison from 1989 to 1991 for "counterrevolutionary propaganda and incitement."

Shortly after his October 1996 sentencing, Liu filed a lawsuit against the Reeducation Through Labor commission: "I am appealing . . . to defend my right to freedom of speech as a law-abiding citizen," he wrote. His relatives have not yet been allowed to visit him.

Tan Zihua, 54, a Shanghai dissident, was sentenced to three years' Reeducation in August 1996 for buying a stamp album of "doubtful origin." Tan is a veteran of the Democracy Wall movement of the late 1970s.

Wang Donghai, a Hangzhou store manager, was sent to serve a one-year Reeducation sentence on July 29, 1996. Together with Chen Longde and other Zhejiang dissidents, Wang coauthored a petition letter to the National People's Congress (see above) and was taken away from his home by police on May 27. Wang was initially held under administrative Shelter and Investigation detention. Hangzhou Public Security Bureau officials agreed to release him into house arrest after Wang's family paid them the equivalent of U.S.$375. On August 30 Wang was redetained, supposedly for the purpose of a "study class," and was released back to house arrest about a month later.

Long one of Zhejiang's most prominent dissidents, Wang edited the independent journal *Zhejiang Tide* during the Democracy Wall movement of the late 1970s and was a leader of the 1989 democracy movement in Hangzhou. Beginning in 1989 he served two years in prison for "counterrevolutionary propaganda and incitement." He was detained at least twice in 1995 and early 1996 for participating in petition campaigns, including a December 1995 petition demanding the release of Wei Jingsheng.

Wang Ming, 36, a veteran dissident from Chongqing, Sichuan Province, was sentenced to three years of Reeducation in December 1996. After hearing of the eleven-year sentence handed down to Wang Dan in November 1996, Wang Ming issued "A Citizen's Declaration on Freedom of Speech" calling for the release of Wang Dan and other political prisoners of conscience; arguing that the authorities should have more tolerance toward dissenting political views; and

demanding an end to restrictions on freedom of speech and the press. He was detained only days later. He is currently serving his term in Chongqing's Xishanping Reeducation Brigade.

During the Democracy Wall movement in Chongqing in the late 1970s, Wang founded the independent journal *Bell Peal*.

Xiao Biguang, 35, a former literature professor at Beijing University, was sentenced to a three-year Reeducation term and sent in June 1996 to the Jiangxi No.1 labor farm in Nanchang, Jiangxi Province. A religious and labor activist, he was detained on April 12, 1994, formally arrested three months later and tried on April 10, 1995, on charges of "swindling." According to a prosecution statement, he "used a false identity card to conduct fraudulent activities." The cards, inaccurately describing him as the holder of a doctorate, were printed by his trading company employer, and he never used them. When he received his administrative sentence in July 1996, the verdict of his trial had still not been announced, an indication of the lack of evidence against him. Xiao served his pre-trial detention incommunicado in the Beijing State Security Bureau Detention Center except for an hour-long meeting with his lawyer nine days before the trial.

Xiao helped draft the charter of the League for Protection of the Rights of Working People and was involved in the unofficial Protestant church in Beijing. He supported the Gangwashi church's senior pastor in his clash with the Beijing Religious Affairs Bureau (see Liu Fenggang), helped file a lawsuit on behalf of the Jesus Family and has written essays on religious matters.

Xu Yonghai, 35, a doctor at Fusuijing Hospital in Beijing, received an three-year Reeducation sentence in August 1995. Later in the year Xu filed a lawsuit against the government protesting that his rights had been violated, but he lost his case.

An active member of the Beijing Christian Sacred Love Association, Xu was apprehended without a warrant on May 25, 1995, and accused of "fabricating stories and slandering the government" after signing the petition "Draw Lessons from Blood," which called for democratic reform and rule of law. Xu also sent a letter and an unpublished essay to the Beijing mayor's office protesting official corruption and social inequality.

Yao Zhenxiang, 37, said to be a long-time financier of the Shanghai dissident movement, was sentenced to three years of Reeducation in early August 1996. He was apprehended in Shanghai on April 26 and accused of "duplicating and broadcasting pornographic videotapes," a charge which is reportedly a fabrication. According to family members who visited him on October 15, officers of the Shanghai Public Security Bureau beat him so badly prior to transferring him to the labor camp that he was barely recognizable.

Yao participated in Shanghai's "democracy salons" in the early 1990s and joined the Shanghai Human Rights Association at its founding. In March 1994 he signed the "Nineteen-Point Blueprint for Democratization." Shortly thereafter, in the midst of a major crackdown on dissidents in Shanghai, Yao fled to Hong Kong and later received political asylum in France. He returned voluntarily to Shanghai in February 1996 after he was officially promised that he would not be persecuted.

Yao's younger brother, Yao Zhenxian, was picked up at the same time and sentenced to a two-year Reeducation term at the same time for the same alleged offense. Both brothers are currently at the Dafeng Labor Farm in Jiangsu Province and have been refused permission to exercise their legal right to file a lawsuit challenging the decision to send them to Reeducation camps.

APPENDIX B: NEW CRIMINAL LAW STATUTES ON CRIMES OF ENDANGERING STATE SECURITY

PRC Criminal Law
(March 1997 revised version)

Part II: Special Provisions
Chapter I: Crimes of Endangering State Security

Article 102 Whoever colludes with foreign states to harm the sovereignty, territorial integrity and security of the People's Republic of China is to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment.

Whoever commits the crimes in the preceding paragraph in collusion with institutions, organization, or individuals outside the country shall be punished according to the stipulations in the preceding paragraph.

Article 103 Ringleaders involved in organizing, scheming or acting to split the nation or sabotage national unity, or others involved whose crimes are grave, are to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; other active participants are to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment; and other participants are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights.

Whoever carries out incitement to split the nation and sabotage national unity is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights; ringleaders or others whose crimes are grave are to be sentenced to not less than five years of fixed-term imprisonment.

Article 104 Ringleaders involved in organizing, scheming or carrying out armed rebellion or armed riots, and others involved whose crimes are grave, are to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; active participants are to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment; and other participants are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights.

Whoever instigates, coerces, lures, and bribes state personnel, members of the armed forces, people's police or people's militia to carry out armed rebellion or armed riot are to be heavily punished according to the stipulations in the preceding paragraph.

Article 105 Ringleaders involved in organizing, scheming or acting to subvert the political power of the state and overthrow the socialist system, and others involved whose crimes are grave, are to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; active participants are to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment; other participants are to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights.

Whoever carries out incitement to subvert the political power of the state and overthrow the socialist system by spreading rumors, slander or other means is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights; the ringleaders and others whose crimes are grave are to be sentenced to not less than five years of fixed-term imprisonment.

Article 106 Whoever colludes with institutions, organizations, or individuals outside the borders [of the PRC][115] in committing the crimes stipulated in Articles 103, 104, and 105 of this chapter is to receive a heavier punishment in accordance with the stipulations of the various articles concerned.

Article 107 In the case of institutions, organizations, and individuals inside or outside the borders of the PRC which subsidize organizations or individuals inside the borders to commit the crimes stipulated in Articles 102, 103, 104, and 105, the personnel with direct responsibility are to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights; when the circumstances are serious, they are to be sentenced to not less than five years of fixed-term imprisonment.

Article 108 Whoever defects to the enemy and turns traitor is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment; when the circumstances are serious or when it is a case of leading members of the armed forces, people's police, or people's militia to defect to the enemy and turn traitor, the sentence is to be not less than ten years of fixed-term imprisonment or life imprisonment.

Article 109 Employees of state organs who leave their posts without authorization while on public service and defect by fleeing from the country, or who defect from outside the country's borders, thereby endangering the state security of the PRC, are to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights; when the circumstances are serious, they are to be sentenced to not less than five years and not more than ten years of fixed-term imprisonment.

When state personnel in possession of state secrets commit the crime in the preceding paragraph, they are to receive a heavier punishment in accordance with the stipulations of the preceding paragraph.

Article 110 Whoever endangers state security by committing any of the following acts of espionage is to be sentenced to not less than ten years of fixed-term imprisonment or life imprisonment; when the circumstances are relatively minor, the sentence is to be not less than three years and not more than ten years of fixed-termed imprisonment:

(1) Joining an espionage organization or accepting an assignment from an espionage organization or its representative;

(2) Identifying bombardment targets for an enemy.

Article 111 Whoever steals, pries into, purchases or illegally provides state secrets or intelligence for institutions, organizations or individuals outside the country is to be sentenced to not less than five years and not more than ten years of fixed-term imprisonment; when the circumstances are especially serious, he is to be sentenced to not less than ten years of fixed-term imprisonment or life imprisonment; when the circumstances are relatively minor, he is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights.

Article 112 Whoever supplies arms, ammunition or other military materials to an enemy in time of war is to be sentenced to not less than ten years of fixed-term imprisonment or life imprisonment; when the circumstances are relatively minor, he is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment.

[115] The term "outside the borders" (*jingwai*) is used in this and other mainland laws, in preference to the term "foreign" (*waiguo*), to denote all parts of the world beyond the PRC's present borders including Taiwan, Macao and (prior to July 1, 1997) Hong Kong.

Article 113 Whoever commits any of the crimes of endangering state security mentioned above in this Chapter, except those stipulated in Article 103 (paragraph 2), and Articles 105, 107 and 109, may be sentenced to death when the harm to the state and the people is especially serious and the circumstances especially odious.

Whoever commits any of the crimes in this Chapter may in addition be sentenced to confiscation of property.

APPENDIX C: COUNTERREVOLUTION STATUTES OF THE 1979 CRIMINAL LAW
(Now Superseded)

PRC Criminal Law
Part II: Special Provisions
Chapter 1: Crimes of Counterrevolution

Article 90 All acts endangering the People's Republic of China committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system are crimes of counterrevolution.

Article 91 Whoever colludes with foreign states in plotting to harm the sovereignty, territorial integrity and security of the motherland is to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment.

Article 92 Whoever plots to subvert the government or dismember the state is to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment.

Article 93 Whoever instigates, lures or bribes state personel, members of the armed forces, people's police or people's militia to defect to the enemy and turn traitor or to rise in rebellion is to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment.

Article 94 Whoever defects to the enemy and turns traitor is to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment; when the circumstances are serious or it is a case of leading a group to defect to the enemy and turn traitor, the sentence is to be not less than ten years of fixed-term imprisonment or life imprisonment.

Whoever leads members of the armed forces , people's police or people's militia to defect to the enemy and turn traitor is to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment.

Article 95 Ringleaders in armed mass rebellion or others involved whose crimes are monstrous are to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; other active participants are to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment.

Article 96 Ringleaders in a mass prison raid or in organizing a jailbreak or others involved whose crimes are monstrous are to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; other active participants are to be sentenced to not less than three years and not more than ten years of fixed-term imprisonment.

Article 97 Whoever commits any of the following acts of espionage or aiding an enemy is to be sentenced to not less than ten years of fixed-term imprisonment or life imprisonment; when the circumstances are relatively minor, the sentence is to be not less than three years and not more than ten years of fixed-term imprisonment:

1. Stealing, secretly gathering or providing intelligence for an enemy;
2. Supplying arms and ammunition or other military materials to an enemy; and
3. Taking part in a secret service or espionage organization or accepting a mission assigned by an enemy.

Article 98 Whoever organizes or leads a counterrevolutionary group is to be sentenced to not less than five years of fixed-term imprisonment; others who actively participate in a counterrevolutionary group are to be

sentenced to not more than five years of fixed-term imprisonment, criminal detention, control or deprivation of political rights.

Article 99 Whoever organizes or uses feudal superstition or superstitious sects and secret societies to carry on counterrevolutionary activities is to be sentenced to not less than five years of fixed-term imprisonment; when the circumstances are relatively minor, the sentence is to be not more than five years of fixed-term imprisonment, criminal detention, control or deprivation of political rights.[116]

Article 100 Whoever for purpose of counterrevolution carries on any of the following acts of sabotage is to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; when the circumstances are relatively minor, the sentence is to be not less than three years and not more than ten years of fixed-term imprisonment:

1. Causing explosions, setting fires, breaching dikes, using technological or other means to sabotage military equipment, production facilities, communications or transportation equipment, construction projects, danger-prevention equipment or other public construction or articles of public property;

2. Robbing state records, military materials, industrial or mining enterprises, banks, shops, warehouses or other articles of public property;

3. Hijacking ships, airplanes, trains, streetcars or motor vehicles;

4. Pointing out bombing or shelling targets to the enemy; and

5. Manufacturing, seizing or stealing guns or ammunition.

Article 101 Whoever for the purpose of counterrevolution spreads poisons , disseminates germs or by other means kills or injures people is to be sentenced to life imprisonment or not less than ten years of fixed-term imprisonment; when the circumstances are relatively minor, the sentence is to be not less than three years and not more than ten years of fixed-term imprisonment.

Article 102 Whoever for the purpose of counterrevolution commits any of the following acts is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control or deprivation of political rights; ringleaders or others whose crimes are monstrous are to be sentenced to not less than five years of fixed-term imprisonment:

1. Inciting the masses to resist or to sabotage the implementation of the state's laws or decrees; and

2. Through counterrevolutionary slogans, leaflets or other means, propagandizing for and inciting the overthrow of the political power of the dictatorship of the proletariat and the socialist system.

Article 103 Whoever commits any of the crimes of counterrevolution mentioned above in this Chapter, except those in Articles 98, 99 and 102, may be sentenced to death when the harm to the state and the people is especially serious and the circumstances especially odious.

Article 104 Whoever commits any of the crimes in this Chapter may in addition be sentenced to confiscation of property.

[116] In September 1983, the NPC Standing Committee, in its *Decision Regarding the Severe Punishment of Criminal Elements Who Seriously Endanger Public Security*, raised the maximum penalty available under Article 99 to death. (This overruled Article 103's original exclusion of Article 99 offenses from the scope of the death penalty.)

APPENDIX D: SENTENCING TRENDS IN TWENTY CASES OF COUNTERREVOLUTION

A close examination of twenty case studies of counterrevolution that appeared in a legal textbook compiled and published by the Supreme People's Court in November 1991 reveals some interesting patterns which may be of relevance in analyzing current official statistics on counterrevolutionary cases (see Table 2, above) . Sixteen of the cases occurred during the period 1983-84; the remaining four occurred in 1987. All were apparently selected by the authorities for their typicality, and full details of the defendants' names, dates of alleged offenses and of the trials, together with individual sentencing information were provided. The various data from these twenty sample cases broke down roughly as follows:

- A total of 144 defendants were tried in the twenty cases, making an average of just over seven defendants per case.

- Altogether twenty-nine prisoners — or twenty percent of the total — received the death penalty and were executed.

- Of the 115 prisoners who were not executed, thirty-two were sentenced to death with a two-year stay of execution (usually commuted to life imprisonment); twenty-one received sentences of life imprisonment; fifty-eight were sentenced to fixed terms of imprisonment ranging from one to twenty years each; and only four were freed after trial. (All the defendants were found guilty.)

- The average prison term handed down to the fifty-eight prisoners who received fixed-term sentences was just under ten years, with altogether thirty-seven (or almost two-thirds of the group) receiving sentences of ten years or more.[117]

- After taking into account the fifty-three additional prisoners who received either life terms or suspended sentences of death, as many as ninety out of the 115 not executed — or almost eighty percent — were due to spend ten years or more in prison.

[117] A similar breakdown of the sentences being served by a sample group of 133 other counterrevolutionary prisoners showed almost identical results. The group comprised ninety-five persons convicted of nonviolent counterrevolutionary acts and thirty-eight convicted of allegedly violent such acts. The average prison term imposed on the nonviolent prisoners was 9.4 years, while that handed down to the allegedly violent ones was 11 years. The combined average for both categories came to 9.8 years.