

**UNDERSTANDING CHINA'S CRACKDOWN ON
RIGHTS ADVOCATES: PERSONAL ACCOUNTS
AND PERSPECTIVES**

HEARING
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these “brainwashing” classes. At least 3,000 have been tortured to death.

As a result of fighting for freedom, many lose their own freedom. I recall the time in 2011 when Beijing’s secret police picked me up and put me in solitary confinement for 70 days. While the secret police used violence against me, they declared, “Don’t talk about law, no one can help you.” But I never gave up hope.

My longing for justice and freedom gave me strength. I believe that our struggle is meaningful and we are becoming more powerful. I also firmly believe that in the United States, in Europe, and in every corner of the world where the light of freedom shines, while the struggle of human dignity continues, we will not be forgotten.

I greatly admire the U.S. Congress and the government for your efforts in advocating freedom and human rights. However, the international pressure on violators of human rights is far from adequate. The Chinese Government not only manipulates the international human rights system, it also makes use of its influence in order to blackmail democratic nations.

How much economic benefit can we sacrifice for freedom? When people make this calculation, they are already on the wrong track. The oppressors of freedom are becoming more powerful by taking advantage of the head-in-the-sand policies of democratic countries and “the silence of the good.” Oppressors will not respect national boundaries. By the time the free world feels it needs to protect freedom, I fear it may be too late.

Thank you very much.

Chairman BROWN. Thank you very much, Dr. Teng. We will begin questions in a moment.

Mr. Clarke, thank you for joining us.

[The prepared statement of Mr. Teng appears in the appendix.]

STATEMENT OF DONALD CLARKE, DAVID A. WEAVER RESEARCH PROFESSOR OF LAW, GEORGE WASHINGTON UNIVERSITY SCHOOL OF LAW

Mr. CLARKE. Thank you. Mr. Chairman, members of the Commission, in my testimony today I want to look at two recent detentions in China and discuss their significance for the rule of law in China, and these detentions are those of Xu Zhiyong and Ilham Tohti.

I believe that the main significance of these detentions lies not in the substance of the charges against them—it’s not new that China seeks to repress those whom it sees as its enemies—but rather in the process that accompanied the detentions.

Xu Zhiyong’s current troubles began when he was placed under an informal kind of house arrest on April 12, 2013; his formal detention did not begin until July 16. After formal detention, the police can stretch out to 30 days the time limit for requesting approval of the next stage, which is the formal stage of arrest. The procuracy, which is the body in charge of prosecutions that approves the arrest, has seven days in which to decide to approve or disapprove the arrest.

In Xu’s case, the indictment says he was formally arrested—

is exactly 30 days plus 7 days following his formal detention, so apparently someone was keeping a very close eye on the calendar. But to call this arrest lawful we would have to be satisfied that the term during which he was under house arrest prior to his formal detention was lawful.

Now, what about that? The closest thing Chinese law has to house arrest—this term is often used in media descriptions, and indeed one can call it house arrest, but the important thing to understand is that Chinese law does not have really a term they call house arrest—it is an institution called supervised residence, but that has a number of conditions set forth for it in Chinese law, one of which is that in order to put someone under supervised residence, which is essentially house arrest, it must be that the conditions for arrest—that is, this later formal stage—are already deemed satisfied.

So in that case it’s impossible to justify Xu’s subsequent 37 days in formal detention while they were allegedly deciding whether or not the conditions for arrest were satisfied, because logically they must have already made that decision in order to put him under supervised residence.

Once a suspect is arrested, the authorities have basically up to five months—there are all kinds of ways to extend it up to five months—to keep him in custody while they investigate. Even this five-month limit can be extended indefinitely by action at a very high level. That’s the Standing Committee of the National People’s Congress, which presumably is very troublesome. Xu was not put on trial until January 22, 2014, exactly five months to the day after his formal arrest.

So again, this suggests that the generous time limits afforded by the Criminal Procedure Law were used to the fullest, something that really shouldn’t have been necessary given that the Foreign Ministry has insisted that Xu Zhiyong’s case was simply an ordinary criminal case, no politics about it at all.

The trial itself was marred by a number of violations of the letter and spirit of Chinese law. First, it was not in any real sense open, despite the lack of any grounds under Chinese law for closing it. Second, the defense was not permitted to cross-examine any witnesses for the prosecution, despite the rule calling for cross-examination, or at least some way to challenge evidence, in the Criminal Procedure Law. Third, he was not permitted to call his own witnesses. To protest these and other problems, Xu and his counsel elected to remain silent during the hearing. At the end he attempted to make a statement but was cut off by the judge.

Moving on to Professor Tohti: Ilham Tohti was detained on January 15, 2014, and apparently formally arrested on February 20 on a charge of separatism. This period of time between detention and arrest could fit within that allowed under Chinese law if his case is deemed complex. So far, the time between arrest and trial has not been exceeded.

Nevertheless, the state has deprived him of his rights under Chinese law in other ways. On March 4, his lawyer, Li Fangping, stated that he was no longer allowed to communicate with Tohti, apparently the reason given being that state secrets were involved.

cumstances where it is highly implausible that it really no longer carries any credibility.

Ms. Ilham has already detailed other problems such as cutting off funds to his wife's bank account and, previous to his detention, of course, taking him on various tours around China paid for by the state that he may not have wanted to take.

So there are two lessons here. First, following legal procedures is of course better than not following legal procedures, but it doesn't necessarily produce justice. We have to ask what the laws say, how they were produced, and who gets to interpret them.

May I have another 30 seconds?

Chairman BROWN. Proceed.

Mr. CLARKE. The second lesson is that the Chinese Government retains its ambivalent attitude toward the values of the rule of law. In many cases it wishes to claim the mantle of fidelity to law. It does so sometimes by making the law vague and flexible enough to achieve its purposes, sometimes simply by falsely claiming to be following law, but at other times it doesn't seem to be trying even to appear to be offering fair proceedings, or at least proceedings that follow its own rules. Sometimes authoritarian states try to turn political issues into legal issues in an attempt to neutralize them. The Chinese state sometimes seem to go out of its way to demonstrate that ostensibly legal issues are really political issues.

So I would end just by saying it's really not clear whether it's reasonable to expect at least a slow movement toward the values of rule of law, especially a process-oriented rule of law.

Thanks for the opportunity to testify. I am sorry for going over. Chairman BROWN. No problem. Thank you. Thank you, Mr. Clarke.

Mr. CLARKE. I would appreciate any questions.

Chairman BROWN. Thank you.

Dr. Richardson?

[The prepared statement of Mr. Clarke appears in the appendix.]

STATEMENT OF SOPHIE RICHARDSON, CHINA DIRECTOR, HUMAN RIGHTS WATCH

Ms. RICHARDSON. Thanks very much for the opportunity to testify and for your ongoing leadership. Thanks also to your excellent staff and the work they do.

My written remarks summarize some of the background that we've written about the crackdown on Chinese human rights defenders, but here I simply want to stress that even if one isn't concerned about human rights issues, which obviously we think people should be, I think the current crackdown is bad news for reform generally in China.

By that I mean that Xi Jinping has already shown himself to be a hardline and conservative leader in ways that deeply undercut the kind of popular support he is going to need if he wishes to advance the kind of tough, complex reform agenda against deeply vested interests and bureaucratic intransigence. I raise that simply to make the point that, now more than ever, respect by the Chinese Government—or lack thereof—is a bellwether we think for polit-

I was asked to focus on three specific issues today. One, about similarities and differences in the current crackdown from past ones. I think the similarities are that these things tend to happen at times of political uncertainty.

At the moment, that really is about the fate of Xi Jinping's reform agenda and about the investigations of individuals like Zhou Yongkang, senior political figures who are now being investigated presumably on corruption charges. I think the other similarity is that the prospects for accountability for the crackdown itself remain quite low. It will be difficult to imagine prosecutions for the people who have abused Xu Zhiyong and Ilham Tohti and who are responsible for Cao Shunli's death.

I think there are a couple of important differences right now. The first one is that I think the current crackdown appears to be considerably more strategic, proactive, and aggressive on the government's part. It's not simply reacting to external events like Liu Xiaobo's 2010 Nobel Prize win. I think we're seeing authorities targeting people who are part of initiatives like the New Citizens' Movement, or going after professors and their students, as has also been the case for Professor Tohti's—some of his students.

Second, the government appears to be trying to break down the interdependent relationships between social media activists and mass media that we think are often critical to actually advancing some kind of change, for example, the push against "Big Vs" last year, against certain kinds of Internet users.

Arguably, of greatest concern, this crackdown is targeting incredibly moderate middle-of-the-road activists and issues. These are people who are pushing for public asset disclosure, for access to education, access to UN human rights mechanisms. These are not particularly incendiary calls for regime change, these are issues that would at best wind up in the B section of most American newspapers. The fact that even those issues are considered off limits is of real concern.

I was asked to say a few words about how Tibetan and Uyghur human rights defenders are faring. Obviously we have talked today about the disastrous and politically motivated prosecution of Ilham Tohti. I am compelled to note that yesterday marked the 12th anniversary in prison of Tenzin Delek Rinpoche. These are communities that are extremely vulnerable.

Alongside the national crackdown, I think the tightening in both of those regions following self-immolations, following the Chinese Government's efforts to paint Uyghurs without providing any credible evidence as responsible for attacks on civilians in Beijing and Kunming, puts those communities at even greater risk and actually lowers the standard of what kind of behavior is considered problematic.

We're keeping a close eye on the case of Abduweli Ayup, who is a Uyghur who was arrested in July 2013 for raising money for schools. He was detained, along with two other men. Nine months later, we still don't even know what the charges against him are and that's a real concern to us.

I want to spend at least a minute talking about what we think the United States should be doing. Despite, I think, the often Her-

eral dozen supporters of Xu Zhiyong and the New Citizens Movement have been arrested and will soon be put on trial.

Incomplete statistics reveal that since March 31 last year, at least 200 rights advocates have been arrested, including human rights activists like Guo Feixiong, Zhang Lin, and Zhao Changqing who have been imprisoned numerous times for political reasons since 1989; rights lawyers like Ding Jiayi; Zhang Shaohu, a pastor at a Christian Church in Henan province, and Ilham Tohti, a Uighur scholar who has been a long-time advocate of peaceful dialogue between Uighurs and Han Chinese.

It can be confirmed that during this crackdown, many human rights activists have been subjected to inhumane torture while incarcerated. People now released who were tortured include Ding Hongfen, Shen Jun, Song Ze; while Li Binyun, Huang Wenxun, Yuan Fengchu, Yuan Xiaohua, Liu Ping, Wei Zhongping, Li Shina and others continue to be detained. All of these people were incarcerated for participating in peaceful and legal human rights activities. Five days after Cao Xunli died, the 43-year-old Tibetan political prisoner Goshul Lobsang was tortured to death in Kanlho.

To exacerbate the atmosphere of fear the authorities are targeting the family and friends of rights defenders: Liu Xia, the wife of Nobel Peace Prize laureate Liu Xiaobo has been under house arrest for many years; the families of many Tibetan self-immolators have been imprisoned, like 31 year-old Kuncho Wangmo of Ngaba (Chinese: Aba) Tibetan and Qiang Autonomous Prefecture, Sichuan, whose husband was framed for a crime and sentenced to death.

Many prisoners of conscience are connected to the New Citizens Movement. The earlier incarnation of the New Citizens Movement was a group called *Gongmeng*, or Open Constitution Initiative, founded by Xu Zhiyong and myself in 2003. The Open Constitution Initiative focussed on issues like freedom of speech, freedom of religious belief, opposition to torture, and opposition to the unfair household registration system. It actively joined in a large number of human rights cases such as those involving Gao Zhisheng and Chen Guangcheng, as well as producing an investigative report on the 14 March 2008 unrest in Tibet.

The New Citizens Movement advocates "Freedom, Justice and Love" to encourage ordinary people to fight for citizens rights and unite human rights advocates around the country. Its activities include: promoting educational equality, pressing officials to disclose their assets, and arranging "same-city dinner gathering". By using on-line mobilisation, open letter writing campaigns, signature campaigns, leaflet distribution, pro bono litigation, street speeches, and peaceful protests, The New Citizens Movement has brought the Rights Defence Movement to new heights.

Why is the Chinese government savagely suppressing the Rights Defence Movement and individual rights activists?

Since its inception in 2003, the Rights Defence Movement has made great progress. The earlier ground work of and the sacrifices made by activists, and the intensification of social conflicts reveal several trends: 1) Rights activists are coming out from cyberspace activism into real-world activism. 2) The movement is growing beyond individual cases to becoming active on the streets. 3) The activists are moving away from legal appeals towards political appeals. 4) Individual activists are gradually joining together creating a semblance of organisation. Examples are: Charter 08, the Chinese Human Rights Lawyers Group and the New Citizens Movement.

The authorities sense an obvious threat as the rights movement has progressed towards the New Citizens Movement. However, the rulers of China are unwilling to engage in dialogue and absolutely refuse to relinquish their totalitarian privileges. Under the guise of maintaining stability above all, the authorities brutally punish anyone who in their mind dares to threaten their legitimacy to rule China. The government's heavy-handed crackdown will of course frighten some people, but cannot resolve social problems in Chinese society. On the contrary, suppression will only intensify conflicts and problems. Many rules and regulations in China directly violate people's dignity and freedom. The fissures in our society will become wider and calls for rights and democracy will become more intense if we do not make substantial adjustments to the country's legal and political systems. More and more people are standing up to demand rights and democracy.

For example, a few days ago, thousands of residents in Maoming, in Guangdong Province in southern China, risked their lives to take to the streets to protest plans for a paraxylene (PX) project which poses serious pollution risks.

Also recently, in Jiansanjiang in Heilongjiang Province in northern China, a number of lawyers were detained by local police for investigating a "Legal Education Center," informally known as a "brainwashing class," which is used to imprison innocent citizens without any legal procedure.

Three of these lawyers were roped and hung up while police punched and beat them with police batons.

Why did lawyers and citizens stand up and take on these "brainwashing classes"? Because they are modern-day concentration camps. Countless Falungong practitioners have been sent by the authorities to "brainwashing classes" or Re-education Through Labor camps. At least 3,000 people have been tortured to death in such places since 1999.

As a result of fighting for freedom, many human rights activists lose their own freedom. I recall the time in 2011 when the secret police in Beijing kidnapped me and held me in a secret location for 70 days, during which time I was subject to tortures including sleep deprivation, being punched and kicked, and being held in solitary confinement. While the secret police used violence against me, they frankly declared, "Don't talk to us about the law. No one can help you now."

But I never for a moment gave up hope. My longing for justice and freedom gave me strength. Another source of strength was my firm belief that my friends in jail and on the outside would continue to fight, because we share the same dream for freedom. I firmly believe that our numbers will grow and that our calls for freedom will ultimately stun this savage totalitarian regime to its core.

I also firmly believe that outside China, in the USA, in Europe and in every corner of the world where the light of freedom shines, while the struggle for human dignity continues, we will not be forgotten.

I greatly admire the members of Congress and the American government for your efforts in advocating freedom and human rights. However, the international pressure on violators of human rights around the world is far from adequate. The Chinese government not only manipulates the international human rights system, it also makes use of its economic, military and political influence in order to blackmail great democratic nations. It threatens not to purchase Boeing jets if America criticises the Chinese human rights situation. It threatens not to purchase Airbus if European leaders meet with the Dalai Lama. At many international conferences Chinese human rights has become "the elephant in the room".

How much economic benefit can we sacrifice for the freedom of humanity? When people make this calculation, they are already on the wrong track. Oppressors of freedom will not desist, they will not respect national boundaries, they will not abide by international principles they have promised to follow.

The oppressors of freedom are becoming more powerful by taking advantage of the internet and economic globalisation, by taking advantage of flawed international institutions (the most egregious violators of human rights have colluded to infiltrate the UN Human Rights Commission, and non-democratic regimes in the UN are betraying the interests of their own peoples as well as universal human rights), by taking advantage of the head-in-the-sand policies of democratic countries and "the silence of the good". By the time the free world becomes aware of the need to protect freedom, I fear it may well be too late.

PREPARED STATEMENT OF DONALD CLARKE*

The Significance of Recent Detentions for the Rule of Law in China

APRIL 8, 2014

Introduction

In my testimony today, I will look at two recent detentions in China, and discuss their significance for the rule of law in China. The detentions are those of Xu Zhiyong and Ilham Tohti. I believe that the main significance of these detentions lies not in the substance of the charges against them or the sentences, but rather in the process that accompanied the detentions. It is not news that the Chinese government persecutes those it deems its enemies, so these cases aren't especially significant in that respect. But unlike in some other cases, in these cases the Chinese government has for the most part acted in such a way that it is hard to find clear and unambiguous violations of Chinese procedural rules. Whether it has done so depends on the interpretation of vague concepts such as whether a case is "complex".

Thus, while the rule of law has no place in the investigation and prosecution of Bo Xilai and now Zhou Yongkang, both of whom were and are respectively detained under a Party disciplinary procedure that in legal terms amounts to the crime of unlawful detention, it seems that the authorities are paying more attention to following their own rules in other cases. But those rules are so vague and elastic that even when followed, they offer little protection to defendants. While "rule of law" is an appealing slogan because it seems to command such broad adherence, it does

so precisely because it does not necessarily dictate substantively just results. It is better than no rule of law, as Bo Xilai might now ruefully admit. But it is not synonymous with the protection of human rights. It is a necessary but not a sufficient condition.

Xu Zhiyong

Xu Zhiyong's current troubles began when he was placed under an informal kind of "house arrest" on April 12, 2013. This meant that he was effectively a prisoner in his own home. I call this kind of detention "informal" because while Chinese law has a form of house arrest called "residential surveillance," it's not clear that that procedure was specifically invoked.

His formal detention began on July 16, 2013.¹ That date is important because it unambiguously started the clock in China's Criminal Procedure Law (CPL) ticking. Detention (*juhu*) in China is a different concept from arrest (*daibai*); whereas in the United States we use the term "arrest" to refer to any situation in which a suspect is not free to leave, the same English word in the Chinese context is used to translate a formal stage of the criminal process that can happen long after a suspect has been locked up.

Detention without arrest is supposed to happen only in a limited set of essentially emergency circumstances (CPL 61); where those emergency circumstances are not present, the police are supposed to get approval for an arrest before physically detaining the suspect. In Xu's case, it is fair to say that none of those emergency circumstances existed.

After detention, the police have three days, extendable to seven days in special circumstances, to request the approval of arrest by the procuracy, the body in charge of prosecutions. In complex cases involving, for example, multiple offenses, the period can be as long as thirty days (CPL 89). The procuracy has seven days in which to decide to approve or disapprove the arrest. In Xu's case, the indictment says he was formally arrested on August 22, 2014.² This is exactly thirty days plus seven days following his formal detention; apparently someone in charge was keeping a close eye on the calendar. To call this arrest lawful, however, we would have to be satisfied that the term during which he was under house arrest prior to his formal detention was lawful.

The closest thing China has to house arrest is an institution called "supervised residence" (*jianshi juzhu*) (CPL 72). This is the only lawful rubric under which Xu could have been confined to his residence as he was prior to his formal detention. But supervised residence requires, among other conditions that arguably were not present here, that the conditions for arrest *already be deemed met*. In that case, it is impossible to justify under Chinese law Xu's subsequent 37 days in formal detention prior to his arrest, since the authorities must have decided he was arrestable as early as April 12. David A. Weaver Research Professor of Law, George Washington University Law School, dclarke@law.gwu.edu. I wish to thank Fu Hualing and Joshua Rosenzweig for very helpful comments on an earlier draft.

Xu was arrested on a charge of "gathering crowds to disrupt order in a public place" (Criminal Law 291). Once a suspect is arrested, the authorities have two months—extendable to three with appropriate permission—to keep him in custody while they investigate (CPL 154). This time limit can be extended two months by provincial authorities in complex cases (CPL 156). Even this five-month time limit can be extended indefinitely by action of the Standing Committee of the National People's Congress (CPL 155).

Thus, he should have been released or put on trial by October 22, 2013, unless certain very unusual circumstances applied to his case. But Xu was not put on trial until January 22, 2014, exactly five months after his formal arrest. This suggests that the generous time limits afforded by Articles 154 and 156 of the CPL were used to the full—something that should hardly have been necessary, given the Foreign Ministry's insistence that Xu's was "an ordinary criminal case."

The excessive period of pre-arrest custody was not the only flaw in the proceedings. The trial itself was marred by numerous violations of the letter and spirit of Chinese law. First, the trial was not in any real sense open, despite the lack of any grounds under Chinese law for closing it. Second, the defense was not permitted to cross-examine any witnesses for the prosecution, despite the rule providing for cross-examination or at least some way to challenge evidence in the CPL. It should

¹ See *China Detains Activist Xu Zhiyong*, BBC News, July 17, 2013, <http://bbc.in/1mY3zEA>.
² The indictment is available in English translation at Xu Zhiyong's Indictment <http://www.hchina.org/en/citizens-square/xu-zhiyong-indictment>.

³ See Jerome Cohen, *Xu Zhiyong's Trial Makes a Mockery of Beijing's Pledge to Enforce Rule of Law*, SOUTH CHINA MORNING POST, Jan. 29, 2014, available at <http://bit.ly/MjWYE5>.

be noted that Xu's case is not unique in that regard; the CPL's rule is honored far more in the breach than in the observance. Third, Xu was not permitted to call his own witnesses.⁴

To protest these and other problems, Xu and his counsel elected to remain silent during the hearing. At the end, Xu attempted to make a statement, but was cut off by the judge.⁵ In the end, he was sentenced to four years of imprisonment.

Ilham Tohti

Ilham Tohti was detained on Jan. 15, 2014.⁶ He was apparently formally arrested on Feb. 20, 2014 on a charge of separatism (*fenlie guojia*).⁷ This period of time between detention and arrest could fit within that allowed under Chinese law⁸ if his case is complex. So far, the time between arrest and trial has not been exceeded; the authorities are well within the permitted time period.

Nevertheless, the state has deprived Tohti of his rights under Chinese law in other ways. On March 4, 2014, his lawyer, Li Fangping, stated that he was no longer allowed to communicate with Tohti.⁹ Apparently the reason given was that state secrets were involved. Unfortunately, the Chinese government has used this excuse so often in circumstances where it is highly implausible that it no longer carries any credibility. Occasionally the police have claimed that conditions of detention and interrogation are themselves state secrets, but if this is to constitute a reason for depriving defendants of their right to communicate with a lawyer, then the right is meaningless for all suspects in detention.

Analysis

The point of this detailed history of the Xu and Tohti cases is not to condemn the Chinese government for violating its own rules. It is to further our understanding of the significance of these cases for the rule of law in China.

There are two lessons here. First, following legal procedures is better than not following legal procedures, but it does not necessarily produce justice. We have to ask what the laws say and how they were produced. In Chinese criminal procedure, the rules are heavily weighted in favor of the state, and there is no neutral process to challenge the state's interpretation in its own favor of vague and ambiguous concepts.

The second lesson is that the Chinese government retains its ambivalent attitude toward the values of the rule of law. As I have noted, in many cases the government wishes to claim the mantle of fidelity to law; it does so sometimes by making the law vague and flexible enough to achieve its purposes, and sometimes simply by falsely claiming to be following law. One can call this hypocrisy, but hypocrisy is after all the compliment that vice pays to virtue, and it reflects an acknowledgment of the value of process protections.

At other times, however, the state does not seem to be trying even to *appear* to offer fair proceedings, or at least proceedings that follow its own rules. This is what we see in the trial proceedings of Xu Zhiyong and will probably see in Ilham Tohti's trial. While other authoritarian states often try to turn political issues into legal issues in an attempt to neutralize them,¹⁰ the Chinese state sometimes seems to go out of its way to demonstrate that ostensibly legal issues are really political

⁴ See Andrew Jacobs & Chris Buckley, *China Sentences Xu Zhiyong, Legal Activist, to 4 Years in Prison*, N.Y. TIMES, Jan. 26, 2014, available at <http://nyti.ms/1hQDL98>.

⁵ See *id.*

⁶ See *China: Uighur Scholar Detained*, N.Y. TIMES, Jan. 16, 2014, available at <http://nyti.ms/1PBBXXp>.

⁷ See Bei Feng, *Yilihamu Tuoheti Bei Daibu* [Ilham Tohti Arrested], Feb. 25, 2014, <http://canvul.org/n85273c6.aspx>. This source reproduces what purports to be a notice issued to Tohti's spouse. The notice is dated Feb. 20, 2014.

⁸ The crime of separatism is listed in the first paragraph of Art. 103 of the Criminal Law. The second paragraph lists a lesser crime of "inciting separatism" (*shandong fenlie guojia*). Under Art. 113 of the Criminal Law, separatism, but not inciting separatism, is punishable in some circumstances by death. The *New York Times* reported that Tohti was formally arrested on Feb. 26 and charged with "inciting separatism," see Andrew Jacobs, *China Charges Scholar with Inciting Separatism*, N.Y. TIMES, Feb. 26, 2014, available at <http://nyti.ms/1hii1lg>, but Bei Feng, *supra*, unless the document it purports to cite is spurious, contradicts this.

⁹ Chinese law allows a 24-hour period of "summons" before formal detention, then up to thirty days before the police must request an arrest, and then seven days for the procuratorate to make a decision, for a total of 38 days following actual detention.

¹⁰ See Masoud Hayoun, *China, Uyghurs May Have Lost Middle Way in Mounting Ethnic Tensions*, AL JAZEERA AMERICA, Mar. 4, 2014, <http://alj.com/1ejm1pp>.

¹¹ See generally RULE BY LAW: THE POLITICS OF COURTS IN AUTHORITARIAN REGIMES (Tom Ginsburg & Tamir Moustafa eds. 2008).

issues. Thus, it is really not clear whether it is reasonable to expect at least a slow movement toward the values of process.

Perhaps equally significant prospects for a process-oriented rule of law in China is the fact that the government's indifference to the values of process seems to be shared by at least some of its critics. Recently five Chinese legal scholars were brave enough to post a public analysis of the flaws in the case against Xu Zhiyong.¹¹ Yet their analysis consisted entirely of a defense of Xu against the substance of the charges made against him. They argued that he had not actually created a disturbance of public order, or that the public spaces in question were special. These kinds of arguments might be useful in a court before a neutral judge, but since they are basically expressions of opinion about what the law means or ought to mean, they lack force. The scholars made no objections to any of the procedural problems in the case. As I have pointed out, the pre-trial procedural flaws are not clear-cut. But they are certainly not harder to criticize than the substantive charges, so it is unfortunate that this critique ignored procedural problems both before and during the trial.

One advantage of a procedural critique is that the government can be criticized without ever questioning the validity of its stated laws and policies. Thus, it is ironic that even the government's critics may share its view that it is the substance of the law that counts, not procedure, even though the best way to advance the rule of law in the current political climate might be to focus on procedure.

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PREPARED STATEMENT OF SOPHIE RICHARDSON

APRIL 8, 2014

Rapid socio-economic change in China has been accompanied by relaxation of some restrictions on basic rights, but the government remains an authoritarian one-party state. It places arbitrary curbs on expression, association, assembly, and religion; prohibits independent labor unions and human rights organizations; and maintains Party control over all judicial institutions.

The government censors the press, the Internet, print publications, and academic research, and justifies human rights abuses as necessary to preserve "social stability." It carries out involuntary population relocation and rehousing on a massive scale, and enforces highly repressive policies in ethnic minority areas in Tibet, Xinjiang, and Inner Mongolia. Though primary school enrollment and basic literacy rates are high, China's education system discriminates against children and young people with disabilities. The government obstructs domestic and international scrutiny of its human rights record, insisting it is an attempt to destabilize the country.

At the same time, citizens are increasingly prepared to challenge authorities over volatile livelihood issues, such as land seizures, forced evictions, environmental degradation, miscarriages of justice, abuse of power by corrupt cadres, discrimination, and economic inequality. Official and scholarly statistics, based on law enforcement reports, suggest there are 300-500 protests each day, with anywhere from ten to tens of thousands of participants. Despite the risks, Internet users and reform-oriented media are aggressively pushing censorship boundaries by advocating for the rule of law and transparency, exposing official wrongdoing, and calling for political reforms.

Civil society groups and advocates continue to slowly expand their work despite their precarious status, and an informal but resilient network of activists monitors and documents human rights cases as a loose national "weiquan" (rights defense) movement. These activists endure police monitoring, detention, arrest, enforced disappearance, and torture.

The Xi Jinping administration formally assumed power in March, and proposed several reforms to longstanding policies, including abolishing one form of arbitrary detention, known as re-education through labor (RTL), and changes to the household registration system. It staged high-profile corruption investigations, mostly targeting political rivals. But it also struck a conservative tone, opposing constitutional rule, press freedom, and a "western-style" rule of law, and issuing harsher restrictions

¹¹ See Gan Peizhong, Deng Wuwei, Faxue Jiaoshou, Fabio Lanza, Xu Zhiyong, Wuzui de Fali Yijian Shu [Gan Peizhong and Four Other Law Professors Issue Legal Opinion Arguing that Xu Zhiyong is Innocent], Boxun.com, Jan. 27, 2014, <http://bit.ly/1kAgVBR> (presenting text of letter issued by Gan Peizhong, Peng Bing, Yao Huanqing, Wang Yong, and He Haibo).

on dissent, including through two legal documents making it easier to bring criminal charges against activists and Internet critics.

Bo Xilai, once a rising political star, was sentenced to life imprisonment in September after a show trial that captured public attention but fell short of fair trial standards and failed to address widespread abuses of power committed during his tenure in Chongqing.

Human Rights Defenders

China's human rights activists often face imprisonment, detention, torture, commitment to psychiatric facilities, house arrest, and intimidation.

One of the most severe crackdowns on these individuals in recent years occurred in 2013, with more than 50 activists put under criminal detention between February and October. Human rights defenders are detained for ill-defined crimes ranging from "creating disturbances" to "inciting subversion" for organizing and participating in public, collective actions. In July, authorities detained Xu Zhiyong, who is considered an intellectual leader of the New Citizens Movement, a loose network of civil rights activists whose efforts include a nationwide campaign that calls on public officials to disclose their assets.

In September, Beijing-based activist Cao Shunli was detained after she was barred from boarding a flight to Geneva ahead of the United Nations Human Rights Council (HRC) review of China on October 22. Cao is known for pressing the Chinese government to include independent civil society input into the drafting of China's report to the HRC under a mechanism called Universal Periodic Review (UPR). Another activist, Peng Lanlan, was released in August after she spent one year in prison for "obstructing official business" for her role in the campaign.

Nobel Peace Prize winner Liu Xiaobo continues his 11-year jail term in northern Liaoning province. His wife Liu Xia continues to be subjected to unlawful house arrest. In August, Liu Xiaobo's brother-in-law, Liu Hui, was given an 11-year sentence on fraud charges; it is widely believed the heavy sentence is part of broader effort to punish Liu Xiaobo's family.

Legal Reforms

While the government rejects judicial independence and prohibits independent bar associations, progressive lawyers and legal scholars continue to be a force for change, contributing to increasing popular legal awareness and activism.

The Chinese Communist Party maintains authority over all judicial institutions and coordinates the judiciary's work through its political and legal committees. The Public Security Bureau, or police, remains the most powerful actor in the criminal justice system. Use of torture to extract confessions is prevalent, and miscarriages of justice are frequent due to weak courts and tight limits on the rights of the defense.

In November, the government announced its intention to abolish re-education through labor (RTL), a form of arbitrary detention in which the police can detain people for up to four years without trial. There were about 160,000 people in about 350 camps at the beginning of the year, but numbers dwindled rapidly as the police stopped sending people to RTL. The official press, however, reported that some of these facilities were being converted to drug rehabilitation centers, another form of administrative detention. At time of writing it was unclear whether the government would fully abolish administrative detention as a way to deal with minor offenders, or whether it would instead establish a replacement system that continued to allow detention without trial.

China continues to lead the world in executions. The exact number remains a state secret, but experts estimate it has decreased progressively from about 10,000 per year a decade ago to less than 4,000 in recent years.

Freedom of Expression

Freedom of expression deteriorated in 2013, especially after the government launched a concerted effort to rein in micro-blogging. The government and the Party maintain multiple layers of control over all media and publications.

Internet censors shape online debate and maintain the "Great Firewall," which blocks outside content from reaching Internet users in China. Despite these restrictions, the Internet, especially microblog services known as "weibo," and other social media tools, are popular as a relatively free space in which China's 538 million users can connect and air grievances. However, those who breach sensitive taboos are often swiftly identified and their speech deleted or disallowed; some are detained or jailed.

In January, *Southern Weekly*, a Guangzhou-based newspaper known for its boundary-pushing investigative journalism, was enveloped in a censorship row after the paper's editors found that their New Year's special editorial was rewritten on the