

**FREEDOM OF RELIGION IN CHINA: RELIGIOUS, ECONOMIC AND
SOCIAL DISENFRANCHISEMENT FOR CHINA’S INTERNAL MIGRANT
WORKERS**

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“All human rights are universal, indivisible, interdependent and interrelated.”¹

Vienna Declaration and Programme of Action
June 25, 1993

I. INTRODUCTION

With an estimated membership of 150 million and growing, China’s internal migrant workers or “floating population,” if a country unto themselves, would comprise the world’s seventh largest nation.² As such, the fundamental human rights of this rapidly

¹ This principle was developed at a world conference on human rights held in Vienna from June 14-25, 1993. World Conference on Human Rights, June 14-25, 1993, Vienna Declaration and Programme of Action, § I(5), U.N. Doc A/CONF.157/23 (July 12, 1993), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).

² Due to the mixture of both registered and unregistered migrant workers it is difficult to say with certainty just how large this population is. China Labor Watch puts the number at 140 million, see http://www.chinalaborwatch.org/en/web/article.php?article_id=50243, while the China Digital Times places the overall count at 200 million including workers in smaller towns, see http://chinadigitaltimes.net/2006/05/experts_improve_welfare_of_200_million_rural_workers_ch.php. The embassy of the People’s Republic of China in the U.S.

expanding socio-economic group calls for global scrutiny. China's migrant workers present a very complex social phenomenon. "[T]he country's transition from a planned economy to market socialism and from a totalitarian state to a democratizing authoritarian state has given rise to perhaps the most spectacular human movement in history, with tens of millions of transients moving within the country at any given time."³ With its recent entry into the WTO, and rapidly expanding economy, change is the norm in the Chinese social and political landscape. China has aptly been described as "a society full of paradoxes."⁴ The challenges for poorly educated rural peasants in adapting and integrating into China's urban metamorphoses are indeed daunting.

The purpose of this paper is to take an integrated approach in evaluating freedom of religion for China's migrant workers. It should be emphasized that particular areas of human rights can only be fully understood in the broad and interdependent context of the full range of human rights. To get a clear picture of freedom of religion in China, it is essential to consider a broad spectrum of rights rather than focusing solely on national religious laws, policies, and practices. The degradation in any particular area of human rights is bound to have a ripple or cumulative effect on other rights. The image is one of successive layers of religious freedom being removed from migrant workers until freedom of religion functionally ceases to exist for the group.

This paper will argue that to properly understand freedom of religion in China, particularly for the migrant factory worker population, it is necessary to not only critically examine China's religious policies in respect to international standards, but also to correlate other social, economic, political, and cultural policies to determine if further degradation to religious liberties are present. In particular, it will be argued that the commodification of the migrant work force, in the overall context of China's economic and political

refers to an existing 200 million workers and anticipates rapid growth of this workforce, see <http://www.china-embassy.org/eng/zt/zgrq/t36702.htm>.

³ Ling Li, *Towards a More Civil Society: Mingong and Expanding Social Space in Reform-Era China*, 33 COLUM. HUM. RTS. L. REV. 149, 150 (2001).

⁴ Kim-Kwong Chan, *China's Socioeconomic Changes and the Implications for the Religion-State Dynamic in China*, 2004 BYU L. REV. 325, 334 (2004).

policies, as well as the discriminatory approach of China's urban *hukou* or registration system, with its attendant cultural biases, has a profound impact on freedom of religion for China's growing floating population.⁵

This work will begin, in Sections II-IV, with a critical evaluation of China's overall policy on freedom of religion. Over the past two decades, the People's Republic of China (PRC) has been active in promulgating new laws concerning freedom of religion, including the recent Regulations on Religious Affairs that came into force on March 1, 2005.⁶ Nevertheless, it is still fair to say that China's true policies on freedom of religion have involved "directives, hints and suggestions . . . [being] preferred over the rigidity of laws and ordinances."⁷ Section II will deal with the historical and ideological framework of the Chinese Communist Party (CCP) concerning freedom of religion. Section III analyzes some of the major approaches of the Party in confining or reducing the "free" practice or manifestation of religion in China. Section IV concerns the CCP's strategy to utilize limitation clauses in international human rights instruments to further restrict freedom of religion and to protect Party supremacy. Section V addresses the Chinese government's doctrine of the elevation of economic development over individual human rights and the impact this has on internal migrant workers. Section VI argues that the *hukou* system effectively prevents migrant workers from integrating into the legal, cultural, social, and religious spheres of their urban workplaces. Finally, Section VII concludes that the PRC government needs to abandon its policy of containing religion and provide a legal framework designed to protect freedom of religion for all of its citizens, including internal migrant workers.

⁵ For a discussion of the historical background and development of the *hukou* system, see Fei-Ling Wang, *Brewing Tensions While Maintaining Stabilities: The Dual Role of the Hukou System in Contemporary China*, 29 ASIAN PERSPECTIVE 85 (2005), available at www.asianperspective.org/articles/v29n4-c.pdf.

⁶ Zongjiao shiwu tiaoli [Regulations on Religious Affairs], art. 3 (adopted by the State Council, July 7, 2004, promulgated and effective March 1, 2005) available at <http://www.china.org.cn/chinese/2004/Dec/732346.htm>, translated in 5(2) CHINESE J. INT'L L. 475, 475 (2006) (P.R.C.).

⁷ R. Lanier Britsch, *The Current Legal Status of Christianity in China*, 1995 BYU L. REV. 347, 347 (1995).

II. THE PRC'S DISTINCTIVE VIEW OF FREEDOM OF RELIGION

A good starting point in understanding the status of freedom of religion in China is having a clear picture of both the tumultuous history of religion in the PRC as well as the CCP's ideological perspective on religion. During the fifty plus years of Communist rule in China, there have been numerous government campaigns to suppress religion.⁸ Oppressive measures reached their peak during the Cultural Revolution (1966-1976), and during the 80s and early 90s, harsh and often violent measures by the government continued to be the norm.⁹ Beginning as early as 1991, the CCP began to evaluate and refine its approach to freedom of religion.¹⁰ Changes in the Party's attempts to govern religious freedom have been, not so much a step towards more liberal thinking, as a concession to the ineffectiveness of its previously draconian policies.¹¹ What has emerged today is a policy that continues to uphold the fundamental Marxist goal of the demise of religion while at the same time embracing a more pragmatic and tolerant approach to freedom of religion.

A. *Historical Perspective: Religion as a Threat to the State*

⁸ See generally Chen Huanzhong, *A Brief Overview of Law and Religion in the People's Republic of China*, 2003 BYU L. REV. 465 (discussing a brief history of religious policy in China).

⁹ A report published by the Human Rights Watch discusses religious suppression and provides an extensive list of religious leaders imprisoned or disappeared in the late 80s and early 90s. MICKEY SPIEGEL, CHINA: STATE CONTROL OF RELIGION § IV (Sidney Jones & Jeri Labor eds., Human Rights Watch 1997), available at <http://www.hrw.org/reports/1997/china1/>.

¹⁰ The subtle shift in policy is reflected in Document 6, Central Committee of the Communist Party and the State Council on Some Problems Concerning Further Improving Work, Feb. 5, 1991 (internal unpublished document), reprinted in Britsch, *supra* note 7, app. 2, at 384-93.

¹¹ Britsch notes that *Document 6* represented an "emphasis on control — 'penalizing according to law and strengthening the management' — of religious groups." Britsch, *supra* note 7, at 358. This theme of utilizing a pseudo-legal approach to the repression of religious freedom has consistently been followed by the CCP. *Id.*

It cannot be overemphasized that the ruling Communist party is deeply affected by the long-entrenched Chinese political view that religion poses a threat to the ruling power.¹² Pointing to the White Lotus, Taiping, and Boxer Rebellions of the Qing period, author Kelly Thomas notes, “a combination of religious and political disaffection appeared repeatedly throughout Chinese history and from its earliest days, China’s Communist Party recognized that groups invoking mystical forces have historically played a significant role in toppling weak authorities during transitional periods in China.”¹³ The Chinese government’s excessive reaction to the Falun Gong sect illustrates the level of fear such religious or quasi-religious movements elicit from China’s current leaders.¹⁴

B. *The CCP’s Marxist View of Religion*

The seminal document and ultimate authority on the Communist Party’s position on religion is entitled, *The Basic Viewpoint and Policy on the Religious Question During Our Country’s Socialist Period*, or simply, *Document 19*.¹⁵ It is clear from later policy statements, in particular the internal Central Committee *Document 6* of 1991 and two internal documents produced in 1996

¹² Sonia M. Kim, *Old World Religious Persecution in a New World Setting: How International Relationships Can Affect China’s Treatment towards Its Religious People*, 2 RUTGERS J. L. & RELIGION 2, § III(d) (2000).

¹³ Kelly A. Thomas, *Falun Gong: An Analysis of China’s National Security Concerns*, 10 PAC. RIM L. & POL’Y J. 471, 489 (2001).

¹⁴ Professor Anne Cheung of the University of Hong Kong notes that the real threat from such groups stems from the competing model of social reconstruction they present. “Religious groups do not merely advocate for emancipation from the material world, but also often promote an alternative order of righting wrongs in present social systems.” Anne S.Y. Cheung, *In Search of a Theory of Cult and Freedom of Religion in China: The Case of Falun Gong*, 13 PAC. RIM L. & POL’Y J. 1, 13 (2004).

¹⁵ Document 19, *The Basic Viewpoint and Policy on the Religious Question During Our Country’s Socialist Period*, Central Committee of the Communist Party, Mar. 31, 1982 (internal unpublished document), *reprinted in* Britsch, *supra* note 7, app. 1, at 364-83.

entitled, *Some Hot Issues in Our Work on Religion*, by Luo Shuze,¹⁶ and *China's Current Religious Question: Once Again an Inquiry Into the Five Characteristics of Religion*, by Xiaowen Ye,¹⁷ that in spite of adopting a more pragmatic approach and attempting to frame China's religious policy in acceptable international terms, the CCP's fundamental position has remained largely unchanged.

At the very heart of the PRC policy on religion is the view that "Marxism is incompatible with any theistic worldview."¹⁸ In fact, author Darin Carlson argues that, "[a]lthough the official policy of the Chinese Communist Party (CCP) toward religion is one of freedom of belief, the motivation behind that policy is the idea that safeguarding religious freedom will facilitate religion's natural demise."¹⁹ *Document 19* states that: "Religion is a historical phenomenon pertaining to a definite period in the development of human society. It has its own cycle of emergence, development and demise."²⁰

In what must be a very vexing reality to China's Communist leadership, religious belief in China is obviously still in a state of rapid development rather than gradual decline. Xiaowen Ye, Director of the Bureau of Religious Affairs, states: "[I]n the last decade and more . . . the influence of religion has not been weakened; instead it has grown greatly."²¹ Ye concedes that such growth has in part been fuelled by government oppression:

¹⁶ Luo Shuze, *Some Hot Issues in our Work on Religion*, THEORETICAL J. OF THE CHINESE COMMUNIST PARTY (1996), reprinted in SPIEGEL, *supra* note 9, app. I.

¹⁷ XIAOWEN YE, CHINA'S CURRENT RELIGIOUS QUESTION: ONCE AGAIN AN INQUIRY INTO THE FIVE CHARACTERISTICS OF RELIGION (Mar. 22, 1996), in SELECTION OF REPORTS OF THE PARTY SCHOOL OF THE CENTRAL COMMITTEE OF THE CHINESE COMMUNIST PARTY NO. 5 (1996) (citing UNITED FRONT WORK DEP'T, CENTRAL COMMITTEE, SUMMARY OF THE MAIN EXPERIENCE OF THE PARTY IN WORKING IN THE NATIONAL MINORITIES AREAS IN THE LAST FEW YEARS (1952)), reprinted in SPIEGEL, *supra* note 9, app. X.

¹⁸ Britsch, *supra* note 7, at 372.

¹⁹ Darin W. Carlson, *Understanding Chinese-US Conflict over Freedom of Religion: The Wolf-Specter Freedom from Religious Persecution Acts of 1997 and 1998*, 1998 BYU L. REV. 563, 566 (1998).

²⁰ Britsch, *supra* note 7, at 364.

²¹ XIAOWEN YE, CHINA'S CURRENT RELIGIOUS QUESTION: ONCE AGAIN AN INQUIRY INTO THE FIVE CHARACTERISTICS OF RELIGION (Mar. 22, 1996),

certain comrades in certain areas committed the error of impetuosity and rash advance precisely because they failed to understand the above-mentioned long-term character, national character, and international character of the religions of the national minorities . . . What they did not only failed to eradicate or weaken the religions, on the contrary, strengthened the minorities' religious belief because they felt their religious feelings were suppressed.²²

C. *China's Short Term Strategy: The Golden Period of Religion*

The CCP's short-term strategy concerning freedom of religion, particularly in the context of international public opinion, is to deny that any religious oppression exists in the PRC. China is quick to claim that its citizens have a constitutional right to religious freedom.²³ In the 1997 *White Paper on Freedom of Religious Belief*

in SELECTION OF REPORTS OF THE CENTRAL COMMITTEE OF THE CHINESE COMMUNIST PARTY, No. 5 (1996), reprinted in SPIEGEL, *supra* note 9, app. X.

²² *Id.* (quoting UNITED FRONT WORK DEP'T, CENTRAL COMMITTEE, SUMMARY OF THE MAIN EXPERIENCE OF THE PARTY IN WORKING IN THE NATIONAL MINORITIES AREAS IN THE LAST FEW YEARS (1952)).

²³ Article 36 of the Constitution of the PRC states:

Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.

in China, the PRC government presents a picture of peace, freedom and harmony, mixed with a heavy dose of patriotism.²⁴ In a statement challenged by virtually all human rights groups concerned with freedom of religion in China, as well as undoubtedly by China's estimated 70 million house-church Christians, this document also asserts: "There is no registration requirement for, to quote from Chinese Christians, 'house services,' which are mainly attended by relatives and friends for religious activities such as praying and Bible reading."²⁵

Contrary to this idealized portrait, China has been criticized concerning violations of religious freedom by a wide array of human rights NGOs as well as foreign governments.²⁶ The PRC government consistently denies that such violations exist in China: "Claims that China practices 'religious persecution' are totally groundless and are quite simply based on ulterior motives."²⁷ Thus, the official Chinese position is that there are no serious problems related to religious liberty in the PRC. In fact, the Chinese government asserts that: "All religions co-existing in harmony and mutual respect is a central feature of the relationship between believers and non-believers, and between those of different faiths. China's religious community

XIAN FA [CONSTITUTION], art. 36 (1982) (P.R.C.), *translated in* CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (Foreign Language Press, 1982), *available at* <http://english.people.com.cn/constitution/constitution.html>.

²⁴ See INFORMATION OFFICE OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, WHITE PAPER—FREEDOM OF RELIGIOUS BELIEF IN CHINA, § I (1997), <http://www.fmprc.gov.cn/ce/ceun/eng/zt/dqwt/t28618.htm> [hereinafter WHITE PAPER].

²⁵ *Id.* § III, ¶ 3.

²⁶ See, e.g., BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2006: CHINA (2006), *available at* <http://www.state.gov/g/drl/rls/irf/2006/71338.htm>; Press Release, European Parliament, EP Adopts Report Critical of Human Rights Violations in China (Sept. 7, 2006), http://www.europarl.europa.eu/news/expert/infopress_page/030-10303-247-09-36-903-20060901IPR10251-04-09-2006-2006-false/default_en.htm.

²⁷ Carlson, *supra* note 19, at 563 (quoting *Religious Affairs in China*, BEIJING REV., Sept. 1-7, 1997, at 12, 14 (statement of Xiaowen Ye, Director, Bureau of Religious Affairs, P.R.C., Sept. 1, 1997)).

consents that this is a ‘golden period’ for China’s religious practices”²⁸

D. *The CCP’s Long Term Goal: The Demise of Religion*

While the Chinese government may attempt to cultivate a public image of religious tolerance, there is no doubt that Party policy is committed to actively seeking the eventual demise of religious belief in China. The CCP’s religious policy begins with the emphasis that the freedom to believe must be counterbalanced by the freedom to not believe in religion. *Document 19* states: “What do we mean by freedom of religious belief? We mean that every citizen has the freedom to believe in religion and also the freedom not to believe in religion We Communists are atheists and must unremittingly propagate atheism.”²⁹

While this may appear prima facie to be a fair approach, the almost complete restriction of religious persons in China to propagate or proselytize their faith outside of the confines of registered religious

²⁸ Xiaowen Ye, *Safeguarding the Freedom of Religious Belief*, CHINA’S HUMAN RIGHTS, § II, ¶ 4 (1998), <http://www.humanrights-china.org/zt/situation/2004020041015100656.htm> (last visited Apr. 9, 2007). According to David Aikman, former senior correspondent of *Time* magazine and author of *Jesus in Beijing: How Christianity is Transforming China and Changing the Global Balance of Power*, Mr. Ye is a “self-professed militant atheist, [and] a holdover from the former regime of President Jiang Zemin.” *Will Religion Flourish Under China’s New Leadership?: Hearing Before the Cong.-Exec. Commission on China*, 108th Cong. 27 (2003), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:89733.pdf [hereinafter *Commission on China*] (statement of David B.T. Aikman).

²⁹ Britsch, *supra* note 7, app. I, at 369. The White Paper echoes this:

Each country has its own history, culture and national conditions, which decide that each country’s protection of freedom of religious belief has its own characteristics. While stressing the protection of freedom of religious belief, China pays equal attention to the protection of the freedom not to believe in religion, thus ensuring freedom of religious belief in a complete sense. This is a more complete and more comprehensive protection of citizens’ basic rights.

WHITE PAPER, *supra* note 24, § II, ¶ 7.

sites falls far short of a State-sponsored comprehensive program of Marxist propaganda. *Document 6* states: "Preaching and missionary work by self-styled preachers and other illegal missionary work must be firmly curbed."³⁰

The most profound application of the believe/not believe principle is its application to children under the age of eighteen. *Document 19* states: "It will be absolutely forbidden to force anyone, particularly people under eighteen years of age, to become a member of a church, to become a Buddhist monk or nun, or to go to temples or monasteries to study Buddhist scripture."³¹ In its dialogue over human rights with the West, particularly with the United States, China has maintained that "they do not have an official policy that bans religious practice for minors."³² Nevertheless, it is quite clear that the CCP believes that it is highly strategic to take every possible measure to educate a new generation in an atheistic framework, and to us, religious freedom for minors is severely curtailed in China.

In examining the rights of children in China it has been noted that "[r]eligious groups must be registered with the government and if children join an unregistered group, those children face harassment, imprisonment, and even death from torture."³³ While such severe measures are increasingly rare, it is evident that China's policy on religious freedom for minors violates international standards.³⁴

³⁰ Britsch, *supra* note 7, app. 2, at 388.

³¹ *Id.* app. 1, at 370.

³² *Commission on China*, *infra* note 28, at 5 (quoting Randall Schriver, Deputy Assistant Secretary for East Asian and Pacific Affairs, Dep't of State, Washington, D.C.).

³³ Timothy John Fitzgibbon, *The United Nations Convention on the Rights of the Child: Are Children Really Protected? A Case Study of China's Implementation*, 20 LOY. L.A. INT'L & COMP. L.J. 325, 349 (1998).

³⁴ In particular, China's policy restricting freedom of religion for children violates Articles 13 and 14 of the Convention on the Rights of the Child. Convention on the Rights of the Child, arts. 13, 14, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), *available at* <http://www.unhcr.ch/html/menu3/b/k2crc.htm>. Article 13 provides that the child "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 the child's choice." *Id.* art. 13(1). Article 14 provides that: "States Parties shall

A second approach to facilitating the demise in religion in China is the effort to make religion strictly a private matter. *Document 19* asserts, “it should be emphasized that the crux of the policy of freedom of religious belief is to make the question of religious belief a private matter”³⁵ Clearly, the intent of this policy is to prevent the development of religious organizations that may challenge the authority of the State. Despite the government’s best efforts, religious networks have blossomed in China, particularly in the context of the underground church, where affiliations numbering in the millions are well established.³⁶

A third technique employed by the Party is the establishment of Religious Patriotic Associations. Such associations exist for all five of the officially recognized religions: Buddhism, Daoism, Islamism, Catholicism and Protestantism. *Document 19* states that the role of these associations is “to help the broad mass of religious believers and persons in religious circles to continually raise their patriotic and socialist consciousness . . . [and to] act as bridges for the Party’s and government’s work of winning over, uniting with, and educating persons in religious circles.”³⁷

Finally, just as religious associations seek to win the minds and hearts of citizens at-large to the socialist cause and ideology, the CCP also is very proactive in producing a generation of patriotic clergy. Speaking of the establishment of seminaries to train such men, *Document 19* states: “The task of these seminaries is to create a contingent of young religious personnel who, in terms of politics, fervently love their homeland and support the Party’s leadership and the Socialist system and who possess sufficient religious knowledge.”³⁸ It is not by accident that the mention of religious

respect the right of the child to freedom of thought, conscience and religion.” *Id.* art. 14(1).

³⁵ Britsch, *supra* note 7, app. 1, at 370.

³⁶ One of the more prominent house church networks, the “Fencheng Fellowship” headed by frequently arrested Zhang Rongliang, is estimated to have 10 million members. See *House-Church Leader Arrested*, 49(2) CHRISTIANITY TODAY (Feb. 2005), available at <http://www.christianitytoday.com/ct/2005/february/2.21.html>.

³⁷ Britsch, *supra* note 7, app. 1, at 375.

³⁸ *Id.* app. 1, at 376.

knowledge comes last and is obviously of low priority. One of the reasons why underground worshipers in China, both Protestant and Catholic, vastly outnumber the attendees of officially registered churches is the political indoctrination of seminary-trained ministers.³⁹ These religious leaders hold little credibility with the bulk of Chinese Christian believers.

III. BOUNDARIES OF FREEDOM: THE CCP'S EFFORTS TO CONTROL AND SUPPRESS FREEDOM OF RELIGION

Contrary to the stated position of the CCP, citizens of the PRC are very limited in their ability to enjoy their supposed constitutional right of freedom of religion. In reality, due to the manner in which the Chinese government defines religion and exercises administrative control over religious bodies, freedom of religion is severely impaired. Though it should be recognized that freedom of religion has improved in China in the past decade, this basic human right still falls significantly short of international standards.⁴⁰ It is apparent that, despite attempts to convince the international community of its progressive stance on freedom of religion, China takes numerous steps to restrict such freedom.

A. *The PRC's Narrow Definition of Religion*

China restricts freedom by narrowly defining what it considers valid religious belief systems. An example of this type of restriction is found in the Regulations from the Shanghai Religious Affairs Bureau that states in Article 3: "The term *religion* in these regulations refers to: Buddhism, Daoism, Islamism, Catholicism and

³⁹ For a brief discussion of political indoctrination in China's seminaries see Paul Davenport, *China's 'Theological Construction' Campaign Intensifies: Debate Continues as to Its True Effect on the Chinese Church*, July 17, 2001, http://www.worldevangelical.org/textonly/3persec_china_17jul01.html.

⁴⁰ See Randall Peerenboom, *Assessing Human Rights in China: Why the Double Standard?*, 38 CORNELL INT'L L.J. 71, 100-03 (2005) (discussing both the minor improvements and the existing limitations on the free practice of religion in China).

Protestantism.”⁴¹ Defining religion in this manner allows the government to expand the category of religious groups labeled “evil cults.” It also provides a mechanism for maintaining an adequate control and management infrastructure through the eight Patriotic Associations.

B. *Normal Religious Activities*

A second boundary to religious freedom comes through the related concepts of “normal religious activities” and the registration system for religious sites. Article 36 of the Constitution of the PRC provides freedom only for “normal religious activities.”⁴² This is reiterated in the recently promulgated Regulations on Religious Affairs, which states in Article 3: “The State, in accordance with the law, protects normal religious activities”⁴³

The primary test of “normal religious activities” is those activities that occur at a legally registered religious site.⁴⁴ The policy

⁴¹ Regulations from the Shanghai Religious Affairs Bureau (approved by the Standing Comm. of the 10th People's Congress of Shanghai, effective Mar. 1, 1996), *reprinted in* SPIEGEL, *supra* note 9, app. IV.

⁴² XIAN FA, art. 36 (1982) (P.R.C.), *translated in* CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (Foreign Language Press, 1982), *available at* <http://english.people.com.cn/constitution/constitution.html>.

⁴³ Zongjiao shiwu tiaoli [Regulations on Religious Affairs], art. 3 (adopted by the State Council, July 7, 2004, promulgated and effective March 1, 2005) *available at* <http://www.china.org.cn/chinese/2004/Dec/732346.htm>, *translated in* 5(2) CHINESE J. INT'L L. 475,475 (2006) (P.R.C.).

⁴⁴ This relationship is spelled out in the Circular on the Opinion Concerning Carrying Out the Special Struggle to Curb the Illegal Activities of Catholic and Protestant Christians According to Law, which states the goal of:

educat[ing] the broad masses of religious believers to observe the regulations governing the sites of worship, and to persuade [those] who worship at illegal sites to go worship in the open ones, and make them see the line of demarcation between normal and legitimate religious activities on the one hand and illegal activities on the other, so as to divide and disintegrate the illegal sites of worship.

on registration was established in 1991 by *Document 6*, which states: “All sites of religious activities must be registered according to law”⁴⁵ Article 6 of the Regulations on Religious Affairs states: “The establishment, alteration, or cancellation of registration, of a religious body shall be registered in accordance with the provisions of the Regulations on Registration Administration of Associations.”⁴⁶

All non-registered religious sites, especially house church sites, have de facto illegal status due to their unwillingness to accept the government control that accompanies registration.⁴⁷ Because of the Chinese government’s position on registration, the PRC does not view persecution of non-registered religious sites and believers to be a violation of freedom of religion but merely an application of national laws. As seen in the prominent case of Bishop Ding, whose speech calling for greater government tolerance towards unregistered house churches cost him re-election as a delegate to the NPC, any public assertion to the contrary is not well received.⁴⁸

Circular on the Opinion Concerning Carrying Out the Special Struggle to Curb the Illegal Activities of Catholic and Protestant Christians According to Law, Office of the CP Municipal Committee, Mar. 1, 1997, *reprinted in SPIEGEL, supra* note 9, app. II.

⁴⁵ Document 6, Central Committee of the Communist Party and the State Council on Some Problems Concerning Further Improving Work, Feb. 5, 1991 (internal unpublished document), *reprinted in Britsch, supra* note 7, app. 2, at 387.

⁴⁶ Regulations on Religious Affairs, art. 6.

⁴⁷ Ellen S. Reinstein, *Turn the Other Cheek, or Demand an Eye for an Eye? Religious Persecution in China and an Effective Western Response*, 20 CONN. J. INT’L L. 1, 15-16.

⁴⁸ In July of 1992, Bishop Ding Guangxun, leader of China’s official Protestant church, spoke at a National People’s Congress (NPC) meeting, calling for an end to the “wind of suppression” that had “wrongly” blown up in some places against unregistered Protestant churches. Bishop Ding described some of the methods used to suppress religious activity:

They mobilize cadres, PSB [the Public Security Bureau, or police,] and People’s Militia to use electric batons, tear up religious pictures, confiscate Bibles and religious publications, imprison the believers, fine them, cut off their electricity, water and social security grain supplies, demolish houses and other such activities. . . . This wind of suppression is

C. *Administrative Controls Over Religious Bodies*

Another boundary to freedom of religion in China is the high level of administrative control the State exerts over religious practices. China is quick to justify its bureaucratic policy on religious affairs. Xiaowen Ye argues:

Managing social affairs according to law is the sign of a modern country ruled by law. As religious affairs are part of social affairs, they should also be managed according to law, i.e., exerting administrative supervision over practices prescribed by law so as to guarantee the *legitimate rights* and interests of religious believers who are a minority in the Chinese population.⁴⁹

When discussing legitimate rights in China, the backdrop always involves subservience to the rights of the ruling Communist Party.⁵⁰

against the Party's policy, and the harm it is causing is serious.

Carlson, *supra* note 19, at 573 (citing Guangxun Ding, Speech to the National People's Congress on Correctly Dealing with the Religious Issue (July 1992), reprinted in ASIA WATCH, CONTINUING RELIGIOUS REPRESSION IN CHINA 36 (1993)).

⁴⁹ Ye, *supra* note 28, § II(1), ¶ 1 (emphasis added).

⁵⁰ In *Some Hot Issues in Our Work on Religion*, Luo asserts:

No one is allowed to use religion to oppose the party and the socialist system, undermine the unification of the country, social stability and national unity, or infringe on the legitimate interests of the state, the society, the collectives, or other citizens. No one is allowed to use religion to intervene in the state's administration, judiciary, school and public education. Therefore, comprehensive and correct implementation of the party's policy of freedom of religious belief itself implies the

There are a number of issues raised by this approach to religion. First, it is apparent that religion is seen as a threat to the Party's position as well as national security and unity.⁵¹ As such, it is to be expected that management or administration practices will be heavy-handed and highly restrictive. Second, the tone of these policy statements clearly depicts religion as a political tool.⁵² Finally, and perhaps most importantly, religion is portrayed as merely one of numerous "social affairs" to be managed by the State.⁵³ For religious practitioners, particularly Christians, this is a gross misunderstanding of the prominence of an individual's faith in their world view.

An elaborate control structure has been established to manage religious affairs. The Religious Affairs Bureau is the key institution that reports to the Department for a United Front, which in turn reports directly to the Central Committee of the Party.⁵⁴ Registration of a religious site activates the supervisory role of these institutions, which is carried out through the TSPM mechanism as well as the Patriotic Associations.⁵⁵ On a practical level, registration leads to a

management of religion according to law. Religious organizations, Buddhist and Daoist temples and Christian churches are social organizations, and the practice of religion is a social activity, and as such, must subject themselves to government management and supervision.

Luo, *supra* note 16, § 4.

⁵¹ This is particularly true in the case of the Falun Gong movement that is viewed by the PRC government as more of a political than religious group. See Thomas, *supra* note 13.

⁵² As seen in Section IV of the White Paper, the PRC government holds the view that historically religion has been used as a political tool by foreign powers to subvert the Chinese government. WHITE PAPER, *supra* note 24, § IV.

⁵³ See Ye, *supra* note 28, § II, sub-sec. 1.

⁵⁴ Betty L. Wong, Note, *A Paper Tiger? An Examination of the International Religious Freedom Act's Impact on Christianity in China*, 24 HASTINGS INT'L & COMP. L. REV. 539, 541-42 (2001) (citing NINA SHEA, IN THE LION'S DEN 59 (1997)).

⁵⁵ Carlson, *supra* note 19, at 567-68.

substantial loss of freedom for a religious group.⁵⁶ One author describes the role of the Patriotic Associations as a tool of the CCP for controlling “every minute detail of religious activity in China.”⁵⁷ Excessive administrative control over religious personnel serves as one of the primary reasons for the staunch unwillingness of house churches to register with the government.⁵⁸

⁵⁶ Wong notes:

Registration means that a congregation agrees to have its independence curtailed in both administrative and substantive matters. It licenses the government to select clergy, supervise a church’s financial affairs, veto building programs, scrutinize the content of sermons and distribution of religious materials, and restrict or limit activities such as education and social welfare projects.

Wong, *supra* note 54, at 542.

⁵⁷ Eric Kolodner, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislation*, 12 UCLA PAC. BASIN L.J. 407, 425 (1994).

⁵⁸ Kolodner notes:

These restrictions on religious personnel and education of initiates can be devastating to the future of religion in China. Without leaders from the younger generations, the various religious denominations are threatened with extinction. By screening applicants, establishing quotas, and censoring religious training materials, the [CCP] can gut traditional religious belief and practice, and replace them with versions more subordinate to the State. While the older religious personnel might object, the younger generation, reared on Party ideology, will almost certainly be more acquiescent.

Id. at 429.

D. *The CCP's Anti-Infiltration Policy*

Another severe limitation on religious freedom in China involves the doctrine of independence or the “anti-infiltration” policy of the Party. A large section of the 1997 *White Paper on Freedom of Religious Belief in China* is dedicated to a justification of this policy.⁵⁹ Describing events that occurred in the early to mid 1800s, the document describes “imperialist aggression and enslavement” through the alleged means of religion.⁶⁰ The *White Paper* even goes so far as to cite Mark Twain charging that “some of the missionaries imposed on the poor Chinese peasants fines 13 times the amount they were supposed to pay, driving their wives and innocent children to lingering death from starvation, so that they were thus able to use the money gained through such murder to [] propagate the Gospel.”⁶¹ Though this position may seem absurd to many Westerners, it is clear that the Communist Party has a genuine, deep paranoia of religion being used by foreign powers to subvert Party power.⁶²

It should be granted that the Chinese people have in the past suffered harms by both Western and Eastern powers acting at least

⁵⁹ WHITE PAPER, *supra* note 24, § IV.

⁶⁰ *Id.* § IV.

⁶¹ *Id.* § VI.

⁶² Luo states:

As we open our doors wider and wider to the outside world, hostile foreign forces inevitably intensify their efforts to infiltrate China. They use religious infiltration as the breakthrough point in their attempt to “Westernize” and “divide” China, trying to turn the question of religious belief into the political one in order to achieve pluralistic political beliefs through pluralistic religious beliefs. Since the ‘80s, one of their strategies for subverting the socialist countries has been the cultivation of religious forces in those countries and the use of religion as their tie with the underground political forces.

YE, *supra* note 21, § I, ¶ 1-2.

partially under the guise of religion. In fact, many of the wars and much of the suffering in human history has occurred as a result of various “divine mandates.”⁶³ Nevertheless, in the global community that China is now an integral part of, it is inappropriate for China to maintain “that religion serve[s] as a Western brainwashing tool used to infiltrate Chinese thought and undermine national unity.”⁶⁴ One of the integral beliefs of both Catholics and Protestants is in the concept of the “universal church,” which is comprised of all true believers.⁶⁵ To deny Chinese Christians the freedom to freely participate in this global community is to severely infringe upon their freedom of religion.

E. *The Requirement that Religions in China Adapt to Socialism*

Finally, the related Chinese concepts of “adaptation to socialism” and “corresponding obligations” impose serious limitations to freedom of religion. It has been the consistent position of the Party that religions in China must adapt their practices and beliefs to the socialist way, and that freedoms are not intrinsic but come hand-in-hand with duties. In the *Excerpts from Questions and Answers on the Patriotic Education Program in Monasteries* by Human Rights Watch, the question was asked: “What are the aims of the Party’s implementation of the policy of freedom of religious belief[s] . . . ?”⁶⁶ The answer was, “To give guidance and leadership to the adaptation of religion to the socialist system.”⁶⁷ In the PRC, the

⁶³ See generally MARK JUERGENSMAYER, *TERROR IN THE MIND OF GOD: THE GLOBAL RISE OF RELIGIOUS VIOLENCE* (2000) (providing a contemporary discussion on the phenomenon of violence in the name of religion).

⁶⁴ Wong, *supra* note 54, at 541.

⁶⁵ For an explanation of the concept of the Universal Church, see Got Questions Ministries, *What is the Difference between the Universal and the Local Church?* <http://www.gotquestions.org/universal-local-church.html> (last visited Apr. 3, 2007).

⁶⁶ Excerpts from Questions and Answers on the Patriotic Education in Monasteries, *reprinted in* SPIEGEL, *supra* note 9, app. V, *available at* <http://hrw.org/reports/1997/china1/>.

⁶⁷ *Id.*

existence of religion is contingent upon its adaptation to the socialist system.⁶⁸

While Ye maintains that this adaptation does not necessitate the changing of fundamental beliefs, one must wonder how religion can be adapted to a philosophy that, at its core, holds that “Marxism is incompatible with any theistic worldview”⁶⁹ and will lead to the eventual demise of all religions. Communist Party scholar Luo provides a more candid view:

By religion adapting itself to the socialist society, we mean that with the establishment of the socialist society, religion must adjust itself with corresponding changes in theology, conception, and organization. We require religious believers politically to love the motherland, support the leadership of the Chinese Communist Party, adhere to the socialist path, and act within the constitution and laws of the land It is necessary, through the patriotic religious groups and personages, to expound and interpret the religious doctrine and canon in such a way as to be in the interests of socialism; and inspire and guide the religious believers gradually to modify

⁶⁸ WHITE PAPER, *supra* note 24, § II, ¶ 9. In addition, the White Paper states:

Religion should be adapted to the society in which it is prevalent. This is a universal law for the existence and development of religion. Now the Chinese people are building China into a modern socialist country with Chinese characteristics. The Chinese government advocates that religion should adapt to this reality.

Id.

⁶⁹ Britsch, *supra* note 7, at 372.

their negative ways detrimental to national development and social progress.⁷⁰

One scholar accurately concludes that “the government defines what adaptation is required and by what religion, to the point that religions sometimes have to change or modify their teachings and practices in order to suit the political objectives of the CPC.”⁷¹ In the Christian context, house church believers view most “official” seminary trained clergy as a highly politicized product of the program of adaptation who are not a part of the genuine believing community.⁷²

IV. THE PRC’S FAILURE TO ADHERE TO FREEDOM OF RELIGION UNDER INTERNATIONAL HUMAN RIGHTS AGREEMENTS

China often defends its human rights record based on the premise that benefits derived from national economic development justify short-term sacrifices from some segments of society. This is often termed an “Asian values” approach to rights.⁷³ In spite of China’s frequent attempts to argue both for a relativistic approach to human rights and repeated, often hostile claims of State sovereignty related to Chinese human rights practices, numerous international human rights instruments provide a basis for substantial consensus on standards of freedom of religion. While China may not be a signatory party to some of the major international human rights agreements, these standards on freedom of religion have generally been established as international customary law.⁷⁴

⁷⁰ Luo, *supra* note 16, § III, ¶ 1.

⁷¹ Chan, *supra* note 4, at 345 (citing Human Rights Watch/Asia, China: State Control of Religion 8 (1997)).

⁷² Davenport, *supra* note 39.

⁷³ For a discussion of “Asian values,” see Eleftherios Georgiou, Note, *China: Where the Failure to Adhere to Domestic Political Laws Often Leads to Religious Oppression*, 20 N.Y.L. SCH. J. INT’L. & COMP. L. 355, 357 (2000).

⁷⁴ For an explanation of the formation and criteria of international customary law, see PETER MALANCZUK, AKEHURST’S: MODERN INTRODUCTION TO INTERNATIONAL LAW 39-48 (Routledge 1997).

Though there are numerous international instruments that touch on freedom of religion, four in particular are relevant to the PRC. First of all, as a foundation, it is worth noting the fundamental role the Charter of the United Nations provides in the area of human rights.⁷⁵ Secondly, the Universal Declaration of Human Rights (UDHR) expands on the concept of “the inherent dignity” and “equal and inalienable rights of all members of the human family.”⁷⁶ Concerning religion, the UDHR states: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”⁷⁷ Thirdly, and perhaps most important due to China’s status as a signatory party (though the PRC has yet to ratify it), is the International Covenant on Civil and Political Rights (ICCPR). Article 18 of the ICCPR provides a fairly comprehensive definition of freedom of religion:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

⁷⁵ An overriding aim of the United Nations is “[t]o achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and is promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” U.N. Charter art. 1, ¶ 3, *available at* <http://www.un.org/aboutun/charter/>.

⁷⁶ Universal Declaration of Human Rights, G.A. Res. 217A, at ¶ 2, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948), *available at* <http://www.un.org/Overview/rights.html>.

⁷⁷ *Id.* art. 18.

2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.⁷⁸

Finally, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides a comprehensive international standard for freedom of religion.⁷⁹

⁷⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 18, U.N. Doc. A/6316 (Dec. 16, 1966), *available at* http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

⁷⁹ The preamble states:

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind [and] Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed[,] Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. . . . No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, ¶¶ 3, 4, U.N. Doc. A/36/684 (Nov. 25, 1981), *available at* http://www.unhchr.ch/html/menu3/b/d_intole.htm.

These international human rights agreements lay down the following core principles for freedom of religion: (1) religious freedom is an inalienable right which applies to all; (2) freedom of religion, as a primary and fundamental human right, should not be made subservient to other rights; (3) freedom of religion is based on the ability to change one's belief system at any time and as often as desired; (4) freedom of religion involves both internal faith as well as public manifestation; (5) freedom of religion is exercised either alone or in community with others; (6) freedom of religion is inclusive of all belief systems and is not defined by the State; and (7) freedom of religion is only subject to legitimate, non-arbitrary limitations by the State.

A. *Principles for Interpreting Limitation Clauses*

Because States, particularly authoritarian regimes, often misuse the limitations provided in human rights agreements, the U.N. has developed two internationally recognized sets of guidelines: the Johannesburg Principles on National Security⁸⁰ and the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR.⁸¹ Also useful as a guide to limitations is General Comment 22

⁸⁰ ARTICLE 19, THE JOHANNESBURG PRINCIPLES ON NATIONAL SECURITY: FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION (Nov. 1996), <http://www.article19.org/pdfs/standards/joburgprinciples.pdf> [hereinafter JOHANNESBURG PRINCIPLES].

⁸¹ The Siracusa Principles begin with an extremely insightful and helpful set of general interpretative principles, which include:

1. No limitations or grounds for applying them to rights guaranteed by the Covenant are permitted other than those contained in the terms of the Covenant itself.
2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.
3. All limitation clauses shall be interpreted strictly and in favor of the rights at issue
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7. No limitation shall be applied in an arbitrary manner.
8. Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application

(to Article 18 of the ICCPR) by the Human Rights Committee. In particular paragraph ten of the General Comment states:

If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.⁸²

B. *The PRC's Illegitimate Use of Limitation Clauses to Restrict Freedom of Religion*

The CCP often responds to criticisms of its human rights policies by asserting that its actions are in the interest of sovereignty, national unity, and public order, citing the provisions of limitations in treaties such as the ICCPR and the UDHR. Unfortunately, these agreements do not define the various justifications for limiting freedoms. Commenting on UDHR, Article 29, Kolodner argues, “[t]he ambiguity of these permissible restraints inherently raises difficulties. If a State is authorized to define ‘morality,’ ‘public

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11. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.
 12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the state.

U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. on Prevention of Discrimination & Prot. of Minorities, *Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights*, § I(A), Annex, U.N. Doc. E/CN.4/1984/4 (1984), available at <http://hei.unige.ch/~clapham/hrdoc/docs/siracusa.html> [hereinafter *Siracusa Principles*].

⁸² Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, General Comment 22, at 35, U.N. Doc. HRI/GEN/1/Rev.1 (1994), available at www.un.org/depts/dhl (enter search term “Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies”; then follow “English” hyperlink under “U.N. Document Symbol: HRI/GEN/1/Rev.1”).

order,' and 'general welfare,' religious rights protected in theory can become worthless in practice."⁸³

The CCP has used the ambiguity of the UDHR and ICCPR limitations to shape its national laws on religion in order to protect China's one-party system. Article 40 of the Regulations on Religious Affairs begins:

Whoever makes use of a religion to endanger the national security or public security, to infringe upon the personal or democratic rights of any citizen, to disrupt the order of social administration, to encroach public or private properties, or to carry out other illegal activities shall, if a crime is constituted, be subject to criminal liabilities in accordance with the law. If no crime is constituted, he shall be imposed upon administrative penalties by the relevant competent department in accordance with the law. If he causes any loss to any citizen, legal person or other organization, he shall bear civil liabilities in accordance with the law.⁸⁴

These regulations are written in such a broad, non-specific manner as to give the State almost unlimited latitude in creating offenses. Such laws are used as political tools of oppression and have little to do with protecting the rights of China's citizens. Instead, the overarching concern is protecting the interests and concerns of the CCP. In 1997, China incorporated some of these concepts into the Criminal Code in order to give an appearance of legality in restricting freedom of religion.⁸⁵

⁸³ Kolodner, *supra* note 58, at 411.

⁸⁴ Zongjiao shiwu tiaoli [Regulations on Religious Affairs], art. 40 (adopted by the State Council, July 7, 2004, promulgated and effective March 1, 2005), available at <http://www.china.org.cn/chinese/2004/Dec/732346.htm>, translated in 5(2) CHINESE J. INT'L L. 475, 475 (2006) (P.R.C.).

⁸⁵ Article 300 of the Criminal Law of the PRC states:

B. *Limitations on the Basis of National Security*

China often justifies repressive actions, particularly against political dissidents, on the grounds of national security. Unfortunately, China defines the concept of national security in a manner incongruent with international norms. The most widely recognized definition of “national security” is provided in Principle 2 of the Johannesburg Principles on National Security. Sub-section (a) provides that restrictions are only valid regarding threats of force against a States’ territorial integrity while sub-section (b) specifically stipulates that entrenching a particular ideology such as Marxism or Socialism is not a qualifying condition.⁸⁶ In reality, many restrictions

Whoever forms or uses superstitious sects or secret societies or weird religious organizations or uses superstition to undermine the implementation of the laws and administrative rules and regulations of the State shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than seven years.

Criminal Law of the People’s Republic of China (adopted by the Fifth National People’s Congress, July 1, 1979, rev. by the Eighth National People’s Congress, Mar. 14, 1997), *translated in* CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, *available at* <http://cecc.gov/pages/newLaws/criminalLawENG.php> (P.R.C.).

⁸⁶ Subsections (a) and (b) provide:

(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country’s existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat 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.

(b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from

under the banner of national security in China, including those concerning freedom of religion, have the primary purpose of “entrenching” and protecting the Communist Party’s ideology. The Siracusa Principles also help define national security and add the following:

The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.⁸⁷

Concerning these principles, Kiss comments, “This excludes restrictions in the sole interest of a government, regime, or power group.”⁸⁸ Thomas notes, “Under the Johannesburg Principles, restrictions may not be overbroad or ambiguous such that they provide the legal basis for the imposition of heavy penalties on people who have expressed opinions but have not resorted to or advocated violence.”⁸⁹ It is certainly clear that applying national security concepts to the general issue of religious liberty in China is grossly inappropriate. Even the politically charged environments of Xinjiang and Tibet are, for the large part, religious movements of peaceful

embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

JOHANNESBURG PRINCIPLES, *supra* note 80, at 8.

⁸⁷ *Siracusa Principles*, *supra* note 81, § I(B)(vi)(32).

⁸⁸ Alexandre Charles Kiss, *Permissible Limitations on Rights*, in THE INTERNATIONAL BILL OF RIGHTS: THE COVENANT ON CIVIL AND POLITICAL RIGHTS 296-97 (Louis Henkin ed., 1981).

⁸⁹ Thomas, *supra* note 13, at 494.

dissent where national security is not a true issue.⁹⁰ For unregistered Protestant and Catholic house churches, national security has no valid application.

D. *Limitations on the Basis of Public Order, Morals, and Health*

A second type of limitation the CCP often utilizes to justify restrictive or oppressive measures in repressing freedom of religion are the areas of public order, public morals, and public health. Article 3(3) of the new Regulations on Religious Affairs states: “No organization or individual may make use of religion to destroy the social order, harm the health of citizens, obstruct the educational system of the State, or carry out other activities that harm the benefits of the State, public benefits, or lawful rights and interests of citizens.”⁹¹ Hammer notes, “the phrase ‘public safety’ also is ambiguous and difficult to interpret In practice, it has been recognised that the actual scope of the ‘public morals’ limitation is difficult to define and is largely left to the states themselves to apply the common (domestic) meaning of the term.”⁹² Obviously, this gives States a great deal of latitude in applying a veneer of legality to repressive actions.⁹³

⁹⁰ On the issue of Tibet, see the 2006 CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ANN. REP. 162, *available at* <http://www.cecc.gov/pages/annualRpt/annualRpt06/CECCannRpt2006.pdf>.

On the issue of Xinjiang, see Human Rights Watch, *China: Human Rights Concerns in Xinjiang*, ¶¶ 3-4 (Oct. 2001), <http://www.hrw.org/backgrounder/asia/china-bck1017.htm>.

⁹¹ Zongjiao shiwu tiaoli [Regulations on Religious Affairs], art. 3 (adopted by the State Council, July 7, 2004, promulgated and effective March 1, 2005) *available at* <http://www.china.org.cn/chinese/2004/Dec/732346.htm>, *translated in* 5(2) CHINESE J. INT’L L. 475, 475 (2006) (P.R.C.).

⁹² LEONARD HAMMER, *THE INTERNATIONAL HUMAN RIGHT TO FREEDOM OF CONSCIENCE: SOME SUGGESTIONS FOR ITS DEVELOPMENT AND APPLICATIONS* 48-49 (Ashgate 2001).

⁹³ The Siracusa Principles provide valid guidelines for a legitimate understanding of these areas. Concerning “public order,” the Siracusa Principles state:

E. *Guidelines for Legitimate Limitations*

Human rights law has developed at least four basic principles that help delineate legitimate limitations of international human rights agreements. First of all, limitations should adhere to the principle of legality. The Johannesburg Principles states:

- (a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with

22. The expression “public order (ordre public)” as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order (ordre public).

23. Public order (ordre public) shall be interpreted in the context of the purpose of the particular human right which is limited on this ground.

24. State organs or agents responsible for the maintenance of public order (ordre public) shall be subject to controls in the exercise of their power through the parliaments, courts, or other competent independent bodies.

25. Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured. . . .

27. Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.

precision so to enable individuals to foresee whether a particular action is unlawful.

(b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.⁹⁴

A second principle is that of consistency with other rights. As will be developed later in the paper, a perfect example is the dynamic between both labor rights and residence rights, or the freedom of movement, as they interplay with freedom of religion for China's floating population. Illegitimate restrictions on citizen's rights in one area will almost inevitably lead to the degradation of rights in other areas.

A third principle is that of proportionality. States should embrace a minimalist approach to limitations in order to maximize freedoms for their citizens. The Johannesburg Principles provide that government restrictions on information or freedom of expression that "protect a legitimate national security interest" must be "the least restrictive means possible for protecting that interest."⁹⁵ Zhu explains, "In the field of international human rights law, the principle of proportionality operates as a test of legitimate regulation of a wide range of rights and interests."⁹⁶

Finally, the principle of non-discrimination applies to any areas where a State attempts to justify limitations of fundamental freedoms. Non-discrimination "denotes an arbitrary or unreasonable distinction contrary to the idea of equality . . . not only an equal application of existing law is required, but even more important, the legislators must provide for equal treatment of every person."⁹⁷

⁹⁴ JOHANNESBURG PRINCIPLES, *supra* note 80, at 7.

⁹⁵ *Id.* at 8.

⁹⁶ Lijiang Zhu, *The Hukou System of the People's Republic of China: A Critical Appraisal Under International Standards of International Movement and Residence*, 2(2) CHINESE J. INT'L L. 519, 533 (2003).

⁹⁷ *Id.* at 534.

Traditional approaches to non-discrimination concerned areas such as ethnicity, gender, language or religion. These concepts are expanded in the UDHR to include “political or other opinion, national or social origin, property, birth or other status.”⁹⁸ Though Article 33 of the Constitution of the PRC guarantees its citizens equality under law,⁹⁹ limitations on human rights are often applied to separatist-oriented minority groups, particular religious groups like the Falun Gong, and to key sectors of the economy such as the floating population of migrant workers.¹⁰⁰

⁹⁸ Universal Declaration of Human Rights art. 2, G.A. Res. 217A, ¶ 2, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948), available at <http://www.un.org/Overview/rights.html>.

⁹⁹ Article 33 of the Constitution of the PRC states:

- (1) All persons holding nationality of the People’s Republic of China are citizens of the People’s Republic of China.
- (2) All citizens of the People’s Republic of China are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.
- (3) The State respects and preserves human rights.

XIAN FA, art. 33 (1982) (P.R.C.), translated in CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA (Foreign Language Press, 1982), available at <http://english.people.com.cn/constitution/constitution.html>.

¹⁰⁰ In the case of Falun Gong, the PRC government utilizes two tactics to restrict religious freedom. First, Falun Gong is labeled as a threat to sovereignty of the State, “The Chinese government has banned the group, accusing group leaders of conspiring with overseas “pro-democratic” and “anti-China forces to overthrow the Chinese government.” Thomas, *supra* note 13, at 471-72. Second, the PRC government labels Falun Gong as a cult, denying its followers any legal status. Cheung, *supra* note 14, at 4. In the case of the Muslim Uighur minority of Xinjiang province, the PRC government has adopted a policy of assimilation through dilution with its “Go West” campaign. With the goal of producing a Han majority, a goal already achieved in Inner Mongolia and Tibet, Han Chinese are given incentives to relocate to Xinjiang. Matthew Moneyhon, *Controlling Xinjiang: Autonomy on China’s New Frontier*, 3 ASIAN-PAC. L. & POL’Y J. 120, 145-148.

V. THE MIGRANT WORKER POPULATION: ECONOMIC ASSET OR A THREAT TO STATE SECURITY

For much, or perhaps all, of modern history, China has been a country sharply divided, with the line drawn between rural peasants and more elite urban residents. Today, China has become a country with one of the world's most disparate income distributions.¹⁰¹ While China's peasants are still expected to rely on the produce of the land for their primary livelihood, urban residents are benefiting from China's phenomenal economic growth.¹⁰² Emerging in the middle of this traditional rural/urban paradigm is China's burgeoning floating population. These internal migrants have lost their place in the rural support networks. At the same time, they have not been allowed to enjoy membership in the urban social structure.

It takes little imagination to realize that this massive subculture poses a significant threat to social stability and the security of the CCP. The floating population is seen as a threat to the Party in two major areas affecting religion. First, the CCP has significant fears of a Christianized labor pool. The openness of the peasant population to religious conversion, particularly Christianity, has been a source of great frustration to the CCP. In *Some Hot Issues in our Work on Religion*, Luo states that "between eighty and ninety percent of the believers live in the rural areas and are by and large poorly educated, their understanding of the law and religious sense are both rather primitive, and they are liable to be used by people with ulterior motives."¹⁰³

The floating population, with its peasant base, has been shown to be even more open to new belief systems than peasants in general. The movement out of the established social support structures of the

¹⁰¹ For a consideration of some of the inadequacies of the Gini index in presenting a clear picture of China's growing rural-urban income inequality, see generally Ximing Wu & Jeffrey M. Perloff, *China's Income Distribution, 1985-2001* (Univ. of Cal., Berkeley Inst. of Indus. Working Paper Series) Feb. 1, 2005, available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1115&context=iir>.

¹⁰² See Zhao Manhua, *The Income Gap in China: Rural Areas Need a Lift*, <http://www.worldbank.org/html/prddr/trans/febmonth2001/pgs13-14.htm> (last visited April 6, 2007).

¹⁰³ Luo, *supra* note 16, § V.

rural areas to the highly fluid environment of the city has a profound impact on migrant workers' openness to change. Some Christian factory owners who, because of their own religious beliefs, have allowed illegal proselytizing and the establishment of outlawed cell-group churches within factory facilities, report that over eighty percent of their workers have become believers since coming to the city.¹⁰⁴ This situation threatens to eventually produce a "solidarity" type labor environment, where religion plays a major role in challenging State power.

The second area of concern for the Party is the mobility of the floating population. In time, internal migrant workers will learn to be equally at home in the city as well as the countryside. In turn, these workers will act as a bridge between the rural and urban worlds of China in increasing the pace of social change, including the growth of religions. One scholar asserts:

Just as the staggering number of internal migrants and transients, currently at least ten percent of the population, or 130 million people, will bring new socio-religious dynamics to China, this increased mobility will also allow China's indigenous faiths to become interspersed with others around the world. First, these internal migrants are generally highly susceptible to religion. For example, many uprooted peasant farmers, working in coastal factories and longing for communal support, may, during this transient period, find the faith, hope, and care necessary to sustain them in local Christian churches. Many of these workers who embrace new forms of faith while living elsewhere may bring their faiths home to villages that had no such religious traditions. The transmission of religion may thus occur

¹⁰⁴ Interview with a shoe factory owner, in Shenzhen, China (Nov. 15, 2004).

in unpredictable ways, for there is no clear pattern to how a peasant worker may travel.¹⁰⁵

The migrant's role can be described as a bridge or conduit between the divergent classes of rural agriculture and urban citizenship. Solinger notes, "The migrants are poised at the intersection of these two institutions, just where they collide: in bringing ruralities to the urban areas"¹⁰⁶ In a nation that, only a couple of decades ago, previously was dominated by the "*danwei*,"¹⁰⁷ or collective unit system, whereby the Party could exercise control at virtually every level of society, the mobility of the migrant workforce presents great challenges to the Party's ability to control China's population and win the fight for their hearts.

¹⁰⁵ Chan, *supra* note 4, at 339-40.

¹⁰⁶ Dorothy J. Solinger, *China's Floating Population*, in *THE PARADOX OF CHINA'S POST MAO REFORMS* 220, 228 (Merle Goldman & Roderick MacFarquhar eds., Harvard Univ. Press 1999).

¹⁰⁷ A **work unit** or *danwei* . . . is the place of employment within the People's Republic of China. Until the Deng Xiaoping reforms, the *danwei* was also the principal means of social control for workers within the People's Republic. The work unit provided living quarters and food, and had extraordinary control over people's lives, having the ability to approve or disapprove travel.

The social control of the work unit diminished considerably after the Deng reforms in that people could now leave their jobs and work for someone else. In addition, most of the state owned enterprises in which the work units existed were very unprofitable, and were slowly closed by the government.

AllExperts, Work unit: Encyclopedia, http://en.allexperts.com/e/w/wo/work_unit.htm (last visited Apr. 2, 2007).

A. *Migrant Workers as a Disposable State Asset*

The overall loss of freedom of religion that all PRC citizens suffer is only the starting point for internal migrant workers. A second layer of loss occurs through the morally bankrupt economic policies of the PRC that victimize the floating population. These workers are the engine that runs China's development machine. Josephs notes, "To borrow a phrase from Marx, the peasant population of China supplies an almost inexhaustible reserve industrial army."¹⁰⁸

Foreign investment enterprises (FIEs) are attracted to China's vast, low-cost labor pool. The fact that the government has shown a lack of commitment to develop policies and infrastructures to protect these workers is also appealing to companies looking to maximize profits at any human cost.¹⁰⁹ In many ways, these migrants have become a valuable commodity for the PRC. Solinger argues that "[t]his climate enshrining enrichment, along with the multiple opportunities for commodification that noncitizen migrants incessantly offered to the agents of a still-standing and regulation-rich

¹⁰⁸ Hilary K. Josephs, *Doing Business in China and Latin America: Development in Comparative and International Labor Law*, 33 COLUM. J. TRANSNAT'L L. 559, 565 (1995).

¹⁰⁹ The overriding policy of the PRC government is to keep its labor force working in order to drive economic development. Article 42(3) of the Chinese constitution states: "Work is the glorious duty of every able-bodied citizen. All working people in State enterprises and in urban and rural economic collectives should perform their tasks with an attitude consonant with their status as masters of the country. The State promotes socialist labor emulation, and commends and rewards model and advanced workers." XIAN FA, art. 42(3) (1982) (P.R.C.), *translated in* CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA (Foreign Language Press, 1982), *available at* <http://english.people.com.cn/constitution/constitution.html>. *See also* Aaron N. Lehl, *China's Trade Union System Under the International Covenant on Economic, Social and Cultural Rights: Is China in Compliance With Article 8?*, 21 U. HAW. L. REV. 203 (1999) (discussing China's failure to protect workers rights under the ICESCR); Toby D. Merchant, *Recognizing ILO Right to Organize and Bargain Collectively; Grease in China's Transition to a Socialist Market Economy*, 36 CASE W. RES. J. INT'L L. 223 (2004) (discussing China's failure to adhere to the International Labor Organizations 1998 Declaration on Fundamental Principles and Rights at Work).

bureaucracy – and in the absence of actually operative law – disposed many official functionaries to join in this process of plundering urbanized peasants.”¹¹⁰ Workers are dehumanized in this type of exploitative environment, and it is almost nonsensical to talk of rights such as freedom of religion that become virtually non-existent. Xu states that: “[t]he purpose of the new category of spiritual civilization is to turn workers into ‘disciplined productive bodies’, to improve their quality as workers.”¹¹¹

B. *The Illusion that Economic Development Leads to Human Rights Freedoms*

The general consensus of human rights advocates is the view that economic development in China will serve as the future foundation for the liberalization of human rights.¹¹² This premise can be used as a justification for the short-term restriction of rights with the long-term goals in mind. In the case of China, it is important to challenge the logic of the validity of this viewpoint. The real question that needs to be asked is whether or not the economic boom in China has brought, or is bringing, greater freedom to those most responsible – internal migrant workers. One author argues:

The “race to the bottom” is . . . “high productivity poverty. . . . The problem isn’t developing countries attracting advanced manufacturing, but rather that wages aren’t simply low; they are artificially depressed. The law or the club--or both--are used to prevent workers from sharing the gains. . . . [T]he historic link between workers

¹¹⁰ DOROTHY J. SOLINGER, *CONTESTING CITIZENSHIP IN URBAN CHINA: PEASANT MIGRANTS, THE STATE, AND THE LOGIC OF THE MARKET* 86 (Univ. of Cal. Press 1999).

¹¹¹ FENG XU, *WOMEN MIGRANT WORKERS IN CHINA’S ECONOMIC REFORM* 172 (St. Martin’s Press 2000).

¹¹² Peerenboom notes that when per capita income reaches the \$4,000 - \$6,000 level that authoritarian governments are generally forced to adopt political reforms. Peerenboom, *supra* note 40, at 116.

producing more and earning more is tragically reversed--workers produce more and earn less.”¹¹³

Because organized labor presents such a threat, the Party’s policy is to keep the workers as busy, productive, unorganized, and isolated as possible. For instance:

[s]ome foreign observers have even seen a promise of a civil society and democracy emerging from these peasant masses, but so far – at least in terms of organizing capability – the migrants have been closer to Sun Yatsen’s picture of the Chinese peasant masses at the turn of the century, a sack of loose sand.¹¹⁴

An alternative to the view that economic development leads to greater freedoms is the argument that such development and market openness is a tactic used by the CCP to maintain its authoritarian position. Gallagher, for example, argues, “At least in the short term ‘reform with openness’ can produce economic change without political liberalization. Reform with openness reduces societal resistance to reform, buying the existing regime time to implement politically difficult reforms and to reformulate the ideological foundation of their legitimacy to rule.”¹¹⁵ As long as migrant workers are seen as a tool for the Party to manipulate in their continuing political metamorphosis to maintain sole power in China, there is little hope for a radical improvement in fundamental freedoms.

¹¹³ Stephen F. Diamond, *The “Race to the Bottom” Returns: China’s Challenge to the International Labor Movement*, 10 U.C. DAVIS J. INT’L L. & POL’Y 39, 42 (2003) (quoting Nancy Montwieler, “High Productivity Poverty” Threatens Workers Labor, Professor Warns Machinists Meeting, DAILY LAB. REP., Sept. 13, 2000, at C-1).

¹¹⁴ MIGRATION IN CHINA 12 (Borge Bakken ed., 1998).

¹¹⁵ MARY GALLAGHER, OPENNESS ISN’T ENOUGH: GLOBALIZATION AND POLITICAL CHANGE IN CHINA 23 (2003), http://www.hrichina.org/fs/downloadables/reports/marygallagher.pdf?revision_id=8961.

C. *Dehumanizing Workers: Exploitative Working Conditions and the Loss of Human Rights*

Even a cursory survey of working conditions in China's factories presents a bleak picture. In 2003, 963,976 workplace accidents claimed 136,340 lives.¹¹⁶ Numerous NGOs and various human rights advocates have detailed literally thousands of fundamental human rights violations in the workplace.¹¹⁷ Workers have been described as:

indentured slaves who work twelve hour days, seven days a week, for less than minimum wage to produce popular apparel and footwear for U.S. businesses. Treated as slaves, these workers suffer emotional and physical abuse, including harassment, beatings, forced abortions, serious injury . . . surrounded by inward facing barbwire, harassed and regulated by armed guards, emergency exit doors locked, water, and bathroom breaks denied. The workers suffer the confiscation of their passports [or ID cards] upon arrival, live in rat infested factory housing under lock downs, and eat bug infested food or suffer malnutrition. Employees bold enough to speak out against violations face harassment, threats, [and] physical abuse¹¹⁸

¹¹⁶ David Fang, *Industrial Accidents on Mainland Drop 13PC*, SOUTH CHINA MORNING POST, June 14, 2004, at 6.

¹¹⁷ The Congressional-Executive Commission on China website provides numerous links to organizations researching labor abuses in China. Congressional-Executive Commission on China, <http://www.cecc.gov/pages/virtualAcad/labor/index.php#links> (last visited May 15, 2007).

¹¹⁸ Kimberly Gregalis Granatino, *Corporate Responsibility Now: Profit at the Expense of Human Rights with Exemption from Liability?*, 23 SUFFOLK

It is not the primary purpose of this paper to provide greater documentation of such abuses that are available from numerous sources. For the purpose of this paper, the significance of such work conditions is the reality that freedom of religion cannot be enjoyed by overworked, overstressed rural peasants trying to survive in the city. In fact, in addition to unsafe working conditions, excessive work hours, and sub-standard wages, many migrant workers find additional restrictions during their few hours off. Xu asserts, for example, that “management is more than routine maintenance and security. Workers who live in dorms have to follow rules and regulations in addition to those which prevail on the shopfloor. Managers take up parental roles and regulate workers’ private lives”¹¹⁹

D. *Chinese Labor Laws: Protection for the State Rather than for the Workers*

In 1994, largely in response to international criticism, China enacted a comprehensive Labor Law.¹²⁰ Though the legislation itself generally conforms to international standards, with notable exceptions in the critical areas of collective bargaining and labor unions, the practical results have been disappointing, mainly due to a lack of enforcement and ignorance on the part of workers concerning their legal rights. One author states:

TRANSNAT'L L. REV. 191, 191-92 (1999) (citing Steven Greenhouse, *18 Major Retailers and Apparel Makers are Accused of Using Sweatshops*, N.Y. TIMES, Jan. 14, 1999; Jeff Wong, *U.S. Cos. Sued Over Saipan Factories*, L.A. TIMES, Jan. 14, 1999 (“describing mistreatment”); Associated Press, *Suits: Saipan is US's Secret Sweatshop*, USA TODAY, Jan. 14, 1999; *\$1 Billion in Lawsuits Target Sweatshop*, OAKLAND TRIBUNE, Jan. 14, 1999 (“describing slave-like conditions and labor practices”)).

¹¹⁹ XU, *supra* note 111, at 186.

¹²⁰ The 1994 Labor Law mandates a 44 hour work week, provides for minimum wages to be established on the local level and covers general issues including occupational safety, social insurance, labor disputes and inspection procedures. Zhonghua renmin gongheguo laodong fa [Labor Law of People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1994, effective Jan. 1, 1995), *available at* <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/37357/64926/E94CHN01.htm> (P.R.C.). Notably, the Labor Law does not provide for the existence of independent trade unions or collective bargaining. *Id.*

First, the Chinese system denies factory employees the right to speak freely to the outside world about what goes on in their workplaces. . . . Second, the system denies legal advocates the right to send, and workers the right to receive, information about workers' rights. An example is the report from China of "a lawyer who was arrested and thrown in jail. His offense: he had set up a small table outside a factory to advise workers of their rights under Chinese law."¹²¹

Due to the CCP's extreme position against independent trade unions, internal migrant workers are left without advocates to ensure their legal protections are carried out. In fact:

A central feature of China's approach to economic policy is to maintain tight control over its workforce even as it opens up the economy. Thus the country's policy towards trade unionism is crucial to understanding the relationship of China to the world economy today. As is widely accepted in political theory and history, trade unions provide a counterweight to the power of government and business interests in a modern industrial society.¹²²

The Chinese government exercises labor control through the All-China Federation of Trade Unions (ACFTU), which "is virtually a

¹²¹ John H. Goolsby, *Is the Garment Industry Trying to Pull the Wool Over Your Eyes? The Need for Open Communication to Promote Labor Rights in China*, 19 LAW & INEQ. 193, 197-98 (2001).

¹²² Diamond, *supra* note 113, at 55.

ministerial department of the central government with over 100 million members.”¹²³ A survey of China’s Labor Law quickly reveals the fact that Chinese and Western concepts of the role of trade unions are vastly different.¹²⁴ In the general provisions section of the Labor Law, Section 4 sets the tone by mandating that “labourers enjoy the right to work and fulfill labour obligations.”¹²⁵ Section 7 states that: “Trade unions shall represent and safeguard the legitimate rights and interests of labourers, and independently conduct their activities in accordance with the law.”¹²⁶ Section 30 states that trade unions “shall have the right to air its opinions if it regards as inappropriate the revocation of a labour contract by the unit. If the employing unit violates laws, rules and regulations or labour contracts, the trade union shall have the right to request for reconsideration.”¹²⁷ From the perspective of the Chinese government, the primary function of trade unions is to prevent work stoppages.¹²⁸ In fact, the option to strike

¹²³ Mao-Chang Li, *Doing Business in China and Latin America: Developments in Comparative and International Labor Law: Article: Legal Aspects of Labour Relations in China: Critical Issues for International Investors*, 33 COLUM. J. TRANSNAT’L L. 521, 548 (1995).

¹²⁴ See Human Rights Watch, *Business and Labor Rights*, <http://www.hrw.org/campaigns/china/beijing08/labor.htm> (last visited May 15, 2007).

¹²⁵ Labor Law, ch. 1, § 4 (promulgated by the Standing Comm. Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995), available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/37357/64926/E94CHN01.htm> (P.R.C.).

¹²⁶ *Id.* § 7.

¹²⁷ *Id.* § 30.

¹²⁸ Describing the functions of the ACFTU, Li asserts:

The traditional function of the ACFTU is twofold: on one hand it carries out government policies in supervising, educating, and managing Chinese workers; on the other, it acts as a communicator and coordinator among the government, the state enterprises, and the workers in tackling matters concerning labor protection, welfare, and disputes. One of its legal functions is to defuse possible strikes, slowdowns, or other forms of labour

does not exist.¹²⁹ One of the greatest leverages that a workforce can assert is a strike. Without the right to collectively bargain independently, including the prospect of a strike, an organization does not fit the current conventional ideas of a trade union.¹³⁰ Thus, it has been argued that the ACFTU is a “‘trade union’ in name only” that “serves as the ‘eyes and ears’ of the state inside every workplace.”¹³¹ As such, workers are particularly vulnerable to workplace abuse.

In 2002 the Human Rights in China’s (HRIC) organization reported that:

because of their status, migrants are particularly vulnerable to abuse in the workplace. Such abuse ranges from dangerous working conditions to physical assaults as well as unfair dismissal. As outsiders in the areas where they are working, migrants face particular difficulties in dealing with abuses of their rights, since they do not enjoy the connection with local officials or institutions that would help in accessing available mechanisms of law enforcement or redress. Given these barriers, a migrant worker challenges ill treatment against enormous odds and challenges.¹³²

contentions, and no strikes have ever been organized by the ACFTU or its branches.

Li, *supra* note 123, at 548.

¹²⁹ Diamond, *supra* note 113, at 56.

¹³⁰ Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights provides for, “The right to strike, provided that it is exercised in conformity with the laws of the particular country.” International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No.16, U.N. Doc. A/6316 (Dec. 16, 1966), *available at* <http://www.ohchr.org/english/law/ccpr.htm>.

¹³¹ Diamond, *supra* note 113, at 57-58.

Given the fact that the exploitation of migrant workers is fueling China's economic development, and by extension elevating the status of the ruling CCP, there is little government motivation to heighten the enforcement of labor laws in China. This reality, coupled with the CCP's deep-rooted paranoia of any type of labor organizing, particularly with any Christian elements harkening to the Solidarity movement, leads to a deep loss of religious freedom for the floating population. Exploited workers do not have the time, energy or social freedom to be full participants in the religious domain.

VI. CHINESE APARTHEID: THE URBAN REGISTRATION SYSTEM

Another layer in the migrant worker's loss of religious freedom stems from the PRC's urban registration or *hukou* system. Beginning in 1958, the PRC implemented a rigid policy of residence registration for urban dwellers.¹³³ This system was "designed to prevent unauthorized rural-urban flows and to promote political stability."¹³⁴ Urban registration brought much coveted privileges in areas such as housing, education, and a variety of social welfare benefits. When China began to open up and transition to a market economy in the early 1980s, the system was relaxed to the extent that many peasants could temporarily leave the countryside to work in specially designated areas. Unfortunately, though they were permitted to come and fill "3-D"-type jobs (dangerous, dirty, and degrading), they were not welcome to stay in the city or to enjoy the benefits of urban residence.¹³⁵

¹³² HUMAN RIGHTS IN CHINA, INSTITUTIONALIZED EXCLUSION: THE TENUOUS LEGAL STATUS OF INTERNAL MIGRANTS IN CHINA'S MAJOR CITIES 91 (Nov. 6, 2002), available at http://hrichina.org/fs/downloadables/video/HRIC_Full_Report_Nov_2002.pdf?revision_id=10322 [hereinafter INSTITUTIONALIZED EXCLUSION].

¹³³ Li, *supra* note 3, at 155.

¹³⁴ *Id.* at 155.

¹³⁵ *Id.* at 182. Li notes that benefits of urban registration include "free compulsory education, urban employment, public housing, free medical services and retirement benefits." *Id.* at 156.

Though there have been some minor improvements in the *hukou* system,¹³⁶ this discriminatory policy remains largely intact. This has led to the somewhat tragic phenomena of internal migrant workers becoming in many ways “foreigners within the cities of their own country.”¹³⁷ One author, comparing Chinese internal migrants to blacks in South Africa prior to the 1990s writes:

In these similar cases, native residents were not just thrust to the bottom of a ladder of social mobility, as are ordinary rural transients upon arrival in third-world towns; instead – as in China – they were denied basic civil and even human rights as well. What all such outcasts have in common is that they all bore the brunt of a form of institutionalized discrimination so stringent that it barred them from becoming full citizens in their home countries.¹³⁸

In fact the *hukou* system was criticized by Chinese citizens as creating a “Chinese apartheid, or Chinese caste.”¹³⁹

Because China’s migrant workers are nationals, international agreements on migrant workers, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, do not apply.¹⁴⁰ Thus, these internal migrant workers have little legal protection to rely upon. Xu writes:

¹³⁶ Minor improvements generally relate to the issuing of greater numbers of temporary permits for rural workers. It is worth noting that reform of the *hukou* system has been proposed by NPC delegates. China.org.cn, Reform of China’s Household Registration System Underway (Sept. 1, 2002), <http://www.china.org.cn/baodao/english/newsandreport/2002sep1/18-4.htm>.

¹³⁷ SOLINGER, *supra* note 110, at 4.

¹³⁸ *Id.* at 5.

¹³⁹ Zhu, *supra* note 96, at 520.

¹⁴⁰ Article 2 of the Convention states: “The term ‘migrant workers’ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” *International*

The *hukou* system was created primarily to limit people's movement, especially peasant movements to urban areas, but it was also a policy that tied rights and privileges of citizenship to a relatively fixed *hukou* location. Further, there are hierarchies in these rights and privileges, depending on rural or urban status and on the status of the employers. One of the reasons for limiting the population of non-peasant status was to limit the welfare burden of the state, since the state was responsible for providing welfare only to its urban population. Although Chinese peasants are Chinese citizens, they are excluded from the sub community of welfare recipients. Their status as 'outsiders' in the city is thus little different from the status international migrants experience.¹⁴¹

A. *The Dregs of Society: Urban Attitudes toward Migrant Workers*

Not only do migrant workers find themselves excluded from the legal protections and social benefits customary for urban residents, they also face cultural discrimination from their urban counterparts. Some examples of urban attitudes towards migrant workers include the idea that migrant workers are different and inferior:

Their thinking, morality, language, and customs are all different, their quality is inferior. The places they inhabit are

Convention on Protection of the Rights of All Migrant Workers and Members of Their Families, U.N. G.A. Res. 45/158 (Dec. 18, 1990), available at <http://www.ohchr.org/english/law/cmw.htm>.

¹⁴¹ XU, *supra* note 111, at 125.

very likely dirty places They lack a concept of public morality . . . so that behavior that harms prevailing social customs occurs time and time again. City residents are dissatisfied because they disturb normal life and livelihood.¹⁴²

In fact, it has been noted that “[c]ity people are biased against them . . . they disdain their words and behavior, hate their enjoying advantages that originally only should be enjoyed by locals.”¹⁴³ The general thinking is that “people, once on the move, are no longer part of a local network, and the social and political surveillance mechanisms that go along with it Once people are away from their ‘roots’, they are outside . . . the sanctions of village and family life, they can no longer be trusted to abide by laws.”¹⁴⁴

Urban residents also resent and blame migrants for social problems related to the massive influx of people into the cities. The infrastructure of an urban area can be quickly overwhelmed when the number of temporary residents far exceeds the normal resident population. The Special Economic Zone of Shenzhen is a good example of this situation. It has been reported, for example, that:

Shenzhen’s burgeoning population – and the uncertainty about just how big it is, is causing headaches for city planners. Shenzhen has 1.65 million permanent residents and 4 million registered temporary ones, but is home to a huge, uncounted transitory

¹⁴² SOLINGER, *supra* note 110, at 106 (citing Wang, Jianmin & Hu Qi, *Zhongshi tiaojie wailai liudong renkou jiekou di duice yanjiu* [Research on Policy Measures to Regulate the Structure of the Floating Population from Outside], 6 ZHONGGUO RENKOU KEXUE [CHINESE POPULATION SCIENCE (BEIJING)] 71, 72 (1988)).

¹⁴³ *Id.* at 106 (citing GE XIANGXIAN & QU WEIYANG, ZHONGGUO MINGONGCHAO: “MANGLIU” ZHENXIANGLU [CHINA’S TIDE OF LABOR: A RECORD OF THE TRUE FACTS ABOUT THE BLIND FLOATERS’] 34 (1990)).

¹⁴⁴ XU, *supra* note 111, at 181-82.

population. Various estimates put the city's population at about 12 million but no one knows for sure.¹⁴⁵

It is certainly not unheard of for the temporary population of manufacturing cities in the Pearl River Delta to exceed the permanent population by tenfold. The resulting imbalance is not only overtaking to physical and social infrastructures, but also can lead to the rapid growth of the crime rate.¹⁴⁶

¹⁴⁵ Chow Chung-yan, *Shenzhen's Population Headache*, SOUTH CHINA MORNING POST, May 28, 2005, at A3.

¹⁴⁶ Wong provides a summary of the issues created by this movement of people into the cities:

The mangliu [a term for migrant workers] population creates social problems as the massive influx of non-local residents burdens the cities' limited physical infrastructure – such as roads, communications, electrical utilities, and the water supply. In addition, the limits of the cities' fragile social support services such as birth control, education, medicine, food subsidies, public security, and environmental protection are challenged and often surpassed. Mangliu exist outside the residential registration system. It has been suggested that the mangliu problem destabilizes Chinese society and threatens the normative order, resulting in recurring social harms. Mangliu criminals are also disproportionately involved in more serious crimes. Mangliu are also said to be populated with petty thieves, hooligans, gamblers, drug addicts, and prostitutes, and living on the fringes of society and at the expense of local communities. More significantly, crimes committed by mangliu appear to be increasing.

Kam C. Wong, *Police Powers and Control in the People's Republic of China: The History of Shoushen*, 10 COLUM. J. ASIAN L. 367, 376 (1996) (internal citations omitted); See also MICHAEL DUTTON, *POLICING AND PUNISHMENT IN CHINA* (1992); LI MENGBAI, LIUDONGRENKOU DUI DACHENGSHI FAZHAN DE YINGXIANG HE DUICE [EFFECT OF FLOATING POPULATION ON THE DEVELOPMENT OF BIG CITIES AND POSSIBLE SOLUTIONS] 32-74 (1991).

B. *Life Without Legal Protections: The Bureaucratic Response to the Floating Population*

China's response to the urban influx has evolved significantly over the past decade. Historically, the *shourong shencha* (Shoushen) system was used to deal with migratory peoples in China.¹⁴⁷ When the 1996 Criminal Procedure Law was passed in China, the "NPC clearly and unequivocally acknowledged *shoushen* as a proper exercise of police investigative powers"¹⁴⁸ Migrant workers are thus potentially vulnerable to detention due to their lack of fixed residence. In fact, a large percentage of migrant workers fail to secure temporary registration papers, as well as numerous other required permits, due to the high costs and the complexity of attending to multiple bureaucratic details by poorly educated rural peasants.

The most recent measure to control the floating population in the cities is the Detailed Implementing Rules for the Measures on the Administration of Aid to Indigent Vagrants and Beggars in Cities, which took effect on August 1, 2003.¹⁴⁹ Article 2 of this legislation states:

¹⁴⁷ In 1961, the PRC adopted the *Shoushen* system to deal with the migrant population. According to author Kam C. Wong, the *Shoushen* system or "sheltering for examination" has served a number of purposes: "Shoushen was designed as a measure whereby the police could detain and investigate suspected criminals who had no known status or confirmed residence or suspected 'itinerant criminals'. In the 1960s, the shoushen was used primarily as a means of population control. By the 1980s, it was being used to promote criminal justice and social control. More recently, shoushen has been used as a measure for collecting debts." *Id.* at 367 (citing Wang Cuihua Bufu Suxian Diqu Xingzhengshu Gongan Chu Shourong Shencha An [The Case of Wang Cuihua's Refusal to Accept Sheltering for Examination by the Su County District Government Administration Police Office], in ZHONGGUO SHENPAN ANLI YAOLAN [IMPORTANT OVERVIEW OF CHINESE ADJUDICATED CASES] 1183 (1992); Guanyu Jian Qiangzhi Laodong He Shouron Shencha Liang Xiang Cuoshi Tongyi Yu Laodong Jaioyang De Tongzhi, Guofa (1980) 56 Hao [Circular Regarding the Merger of Labor Reform and Investigative Detention, State Council (1980) No. 56] (promulgated on Feb. 29, 1980), in ZHONGGUO JINGCHA FALU FAGUI GUIZHANG SHIYI DAQUAN [COMPILATION OF INTERPRETATIONS OF CHINESE POLICE LAWS, REGULATIONS AND RULES] 618-19 (1993)).

¹⁴⁸ *Id.* at 387.

¹⁴⁹ Chengshi shenghuo wuzhuode liulang qitao renyuan jiuuzhu guanli banfa shishi xize [Detailed Implementing Rules for the Measures on the

"Indigent vagrants and beggars in cities" as provided in the Aid Administration Measures means individuals who are leading a life of vagrancy and begging because they are incapable of securing food and shelter for themselves, do not have relatives or friends to depend on, and do not enjoy minimal urban subsistence guarantees or the five rural support guarantees.

Those who behave as vagrants and beggars but do not face the circumstances provided in the clause above do not qualify for aid.¹⁵⁰

Though the tone of the legislation is that of "relief," the real purpose is to return "vagrants" to their home villages. Article 11, for example, provides that:

Where aid recipients do not have transportation funds to return to their place of household registration, place of domicile, or work unit location, aid stations shall issue a transport voucher. After railway, highway, waterway, and other transport units verify the voucher, they shall permit travel by the corresponding conveyance. Aid stations shall notify the families of the aid recipient and relevant organs and work unit at the aid recipient's destination of the relevant

Administration of Aid to Indigent Vagrants and Beggars in Cities] art. 2 (promulgated by Ministry of Civil Affairs, July 21, 2003, effective Aug. 1, 2003), available at <http://cecc.gov/pages/selectLaws/ResidencySocWelfare/implementingRulesAdminAid.php>.

¹⁵⁰

Id. art. 2.

circumstances.¹⁵¹

The unfortunate reality is that the process of returning migrants to their home village is often abused by local authorities.¹⁵²

Finally, the legislation provides control measures to keep the alleged “vagrant” from returning to the city: “The township or county-level people’s government of the place of household registration or domicile of aid recipients shall help aid recipients that return to deal with livelihood and subsistence problems so that such individuals can avoid leaving again to drift and beg”¹⁵³

C. *A Search for Dignity: The Migrants Perspective on the City*

The migrant worker population has generally adopted a pragmatic and resilient stance concerning urban discrimination. First of all, migrants have often come to the city not only to seek an

¹⁵¹ *Id.* art. 11.

¹⁵² Author Xin Frank He states:

For those who claimed that they did not have enough money to buy a ticket home, a detention and repatriation program was used as punishment. Poor migrants were held in detention and had to work for a period to earn train fare to their home provinces. Some migrants could even be subjected to “labor reform” (essentially a prison sentence) for six to eight months and repatriated afterwards.

Xin Frank He, *Sporadic Law Enforcement Campaigns as a Means of Social Control: A Case Study from a Rural-Urban Migrant Enclave in Beijing*, 17 COLUM. J. ASIAN L. 121, 135 (2003) (citing Interview with police officer, Fengtai Public Security Bureau Legal Department, in Fengtai, P.R.C. (July 30, 2000)).

¹⁵³ Detailed Implementing Rules for the Measures on the Administration of Aid to Indigent Vagrants and Beggars in Cities, art. 18 (promulgated by Ministry of Civil Affairs, July 21, 2003, effective Aug. 1, 2003), available at <http://cecc.gov/pages/selectLaws/ResidencySocWelfare/implementingRulesAdminAid.php>.

opportunity for a higher living standard there but also to flee deplorable conditions in the countryside. The HRIC 2002 report states:

Current government policies do not prevent massive rural migration, but rather generate migration through extreme neglect of rural areas. The combination of severe poverty, lack of political rights, poor or non-existent public facilities and a fiscal system managed by predatory and unaccountable local officials are the real reasons why people feel compelled to migrate to cities.¹⁵⁴

In this case, what may appear to be abuse and exploitation of a worker is nevertheless better than life in a rural area. For instance, one author records the perspective of a newly married migrant worker couple:

I asked Xiaxia about her future plans. A cloud of hesitation crept over her smiling eyes, and I listened in shocked recognition to her daily preoccupations: that Xiaoxu's [Xiaxia's husband] boss was a bully and they had nowhere to turn, that they could not afford to go to the hospital without health insurance, and that their future child might not be able to attend school without a residence card. And then, as if sorry to burden me with her present and future woes, she chuckled lightly: "We are so much better off than we were in the countryside. I love the city!"¹⁵⁵

¹⁵⁴ INSTITUTIONALIZED EXCLUSION, *supra* note 132, at 31.

¹⁵⁵ Li, *supra* note 3, at 149.

The difference in lifestyles is best illustrated in the popular saying that it is “better [to have] a bed in the city than a home in the suburbs.”¹⁵⁶ In many ways migrant workers have resigned themselves to a sense of alienation from their urban counterparts. They are willing to endure deplorable working conditions, as well as social ostracism, in order to escape the crushing poverty of the countryside and to pursue the hope of earning enough for a better future. This is not to say that such social rejection is not deeply felt. In many ways migrant workers find it easier to cope with physical deprivation than the unrelenting cultural discrimination that places them at the bottom of society. Their social isolation causes migrant workers to develop their own support networks in the urban setting.¹⁵⁷ Migrant workers are also able to cope with urban discrimination because they often retain an emotional and social connection back to their home village. Murphy asserts:

Chinese migrants, like their counterparts throughout the developing world, are able to come to terms with their lowly status in the cities because the host society is not the social and spatial reality in which they define themselves. Rather, the city is merely somewhere to earn money for their lives in the village.¹⁵⁸

¹⁵⁶ SOLINGER, *supra* note 110, at 36 (citing “Huji yanjiu” ketizu [“Household Registration Research” Task Group], *Xianxing huji guanli zhidu yu jingji tizhi gaige* [The Present Household Registration Management System and Economic System Reform], 3 SHANGHAI SHEHUI KEXUEYAN XUESHU JIKAN [SHANGHAI ACADEMY OF SOCIAL SCIENCE ACADEMIC QUARTERLY] 81, 85 (1989)).

¹⁵⁷ In describing this phenomena Li refers to a primordial “otherness” that characterizes peasant workers in the city. *See* Li, *supra* note 3, at 169 (citing Li Qiang, Guanyu Chengshi Nongmingong de Qingxu Qingxiang ji Shehui Chongtu Wenti [On the Emotional Tendency of Mingong in the Cities and the Problem of Social Conflict], in *Xiandaihua Jingcheng Zhong de Zhongguo Nongmin* [Chinese Peasants in the Process of Modernization] 198 (Zhou Xiaohong ed., 1998).

¹⁵⁸ RACHEL MURPHY, HOW MIGRANT LABOR IS CHANGING RURAL CHINA 43 (2002).

D. *Religious Disenfranchisement*

China's floating population is a group of people who find themselves caught between different worlds. They find themselves somewhere between China's poverty stricken agricultural-based peasants and the emerging urban middle class, though decidedly towards the poorer group. They often live in a spatial limbo, having left the countryside, but are unable to gain full admittance to the city and frequently live in temporary situations on the fringes of urban society. Socially, they are far from their home support networks and face hostility and rejection in their new environment. Though they are sometimes seen as an essential "commodity" of China's socialist construction, they face police abuse, sporadic clean-up campaigns and discriminatory laws from urban bureaucracies. If ever there was a group of people truly disenfranchised, it is China's migrant workers. This sense of displacement extends to religious liberty. Author Daniel Bays writes:

Those believers who have joined the throngs of workers migrating from rural to urban China, and who live day-to-day by temporary labour opportunities, constitute a very different social and cultural element in the urban Protestant community from the established middle-class congregations. Are these workers supported socially and psychologically by the rural communities whence they came, associating with fellow believers from the same locales, like them sojourners in the urban day-labour market? Do they attend established churches, whether TSPM or autonomous? Do those churches welcome them?¹⁵⁹

Chinese laws calling for church registration present a special challenge to migrant workers. The registered TSPM churches of the

¹⁵⁹ Daniel H. Bays, *Chinese Protestant Christianity Today*, in RELIGION IN CHINA TODAY 182, 195 (Daniel L. Overmyer ed., 2003).

city have congregations that differ culturally in such significant ways from most migrants as to present an un-crossable barrier. In addition, illegal or undocumented migrant workers, who comprise a large percentage of this group, are hesitant to attend a church that is under administrative control of the government for fear that their working status may be jeopardized.

Migrants face the same cultural issues in regard to urban house churches. Chinese laws related to urban residence registration relegate migrants to second-class citizens whose existence in the urban landscape is always tenuous. Freedom of religion as well as the full range of rights cannot really be enjoyed in this environment. Zhu notes: “The special importance attached to the freedom of internal movement and residence is evident from its interdependence with other basic human rights.”¹⁶⁰

There is currently little prospect for change in China because migrants lack advocates within the Chinese political hierarchy. Laws are drafted not to protect these workers but to maximize their productivity and minimize their effect on urban standards of living. The overarching principle of the CCP policy on migrant workers is social stability and securing the Party’s continued political dominance. The development of human rights for the migrant worker population is a non-issue for the Chinese bureaucracy. The overall Chinese policy towards the exploited workers runs counter to international norms. As one scholar succinctly states:

Human development is first and foremost about allowing people to lead the kind of life they choose – and providing them with the tools and opportunities to make those choices [U]nless people who are poor and marginalized – who more often than not are members of religious or ethnic minorities or migrants – can influence political action at local and national levels, they are unlikely to get equitable access to jobs, schools, hospitals,

¹⁶⁰Zhu, *supra* note 96, at 522.

justice, security and other basic services.¹⁶¹

At the heart of human rights is the recognition of the inherent value and dignity of the individual. As migrant workers unquestionably play a key role in advancing China's economic development they deserve to be treated equally with their urban counterparts in all respects.

VII. CONCLUSION

The picture of freedom of religion for China's floating population is one of progressive layers of limitations or restrictions upon such liberty. First, China defines freedom of religion in such a way as to remove most meaning from the phrase. Can religious practice that is defined by the State, supervised by the State, ideologically opposed by the State, be called freedom? Can churches who must register with the government, who have their clergy indoctrinated by the government, and who have all external access to the international religious community virtually restricted truly be called free? Can religious belief systems that are forced to adapt their doctrine and rituals to a socialist ideology founded on atheism ever be considered free? Finally, can a system where children under the age of eighteen are functionally forbidden religious education, while at the same time are aggressively educated that religion is a non-scientific opiate for the weak, be characterized as one supporting freedom of religion?

Second, the commodification of migrant workers places all of their fundamental rights, including freedom of religion, in peril. What freedom does an overworked factory employee, living in substandard dorms, burdened by unsafe working conditions, and constrained by a variety of rules related to their "free" time have?

Third, how is it possible for migrant workers to exercise basic social and cultural freedoms when they are treated as non-citizens and foreigners in their own country? Government policies prevent these workers from freely integrating with their urban counterparts and

¹⁶¹ Mark Malloch Brown, *Foreword* to SAKIKO FUKUDA-PARK, HUMAN DEVELOPMENT REPORTS, CULTURAL LIBERTY IN TODAY'S DIVERSE WORLD, at i, v (Cait Murphy & Bruce Ross-Larson, eds., United National Development Programme 2004), available at http://hdr.undp.org/reports/global/2004/pdf/hdr04_complete.pdf.

deep-rooted cultural biases and discrimination reduce migrant workers to objects of contempt by urban residents. When the only legal option is registered churches attended by the urban elite, the migrant workers are left out in the cold.

Many legal scholars have pointed to the numerous religious laws promulgated in the last two decades in China, as well as the recent signing of prominent human rights agreements such as the International Covenant on Economic, Social and Cultural Rights (ICESC)¹⁶² and the ICCPR, to argue that freedom of religion is improving in China. NGOs, while continuing to document human rights abuses in the religious arena, including false imprisonments, torture, and unlawful killings, as well as generalized persecution of non-registered religious entities, have noted that there has been a steady decline of the more overt forms of repression of religion in China. Is this an indication that freedom of religion is improving in China?

The answer to this question is mixed at best. On the one hand, the international human rights community can appreciate the reduction in physical and political suffering in China along with the explosive growth of religious practitioners. On the other hand, caution needs to be exercised. There are very valid concerns that the CCP has learned its lesson that persecution only leads to the growth of the oppressed group and has changed its tactics in its increasingly covert war against religion.

The laws concerning religion, including the most recent Regulations on Religious Affairs,¹⁶³ are designed, not so much to protect freedom of religion, but to legitimize the government's control and suppression thereof. It would be unwise to assume any fundamental change in the Party's attitude toward religion, that of the goal of its eventual demise.

The Party's new tactics are complex and well coordinated. First, laws are used as a weapon against religion and as a shield for

¹⁶² International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

¹⁶³ See generally *Zongjiao shiwu tiaoli* [Regulations on Religious Affairs] (adopted by the State Council, July 7, 2004, promulgated and effective March 1, 2005) available at <http://www.china.org.cn/chinese/2004/Dec/732346.htm>, translated in 5(2) CHINESE J. INT'L L. 475, 475 (2006) (P.R.C.).

the CCP; they do not benefit religious practitioners. Second, the adoption of international human rights instruments is relegated to merely the appearance of conformity with international standards through both contradictory national laws and illegitimate limitations on international accords. China's attempts to relativize international human rights principles further reduce actual conformity to those standards. China's efforts to overly politicize human rights criticism, as attacks upon the nation's sovereignty and attempts of foreign subversion are also a smokescreen designed to divert attention away from the very real abuses the Chinese people face. Finally, the CCP's justification of the degradation of rights, including freedom of religion, in the name of the higher goal of economic development, only serves to protect the Party's status at the expense of migrant workers.

The Chinese government needs to take immediate steps to amend national laws and internal policies, as well as strengthen adherence to international guidelines, on freedom of religion. The starting point is removing the PRC's narrow definition of acceptable or valid religions. This is, in reality, a measure to facilitate the Party's administrative control infrastructure. Globally, the diversity of religion involves thousands of belief systems. In order to align with the international community concerning freedom of religion, the PRC needs to shift to a "whatever belief" perspective.

Second, the PRC needs to repeal legal measures mandating that religious sites register with the government. This is merely a mechanism designed to enhance government control of religion and is not in keeping with the concept of freedom.

Third, the PRC needs to adhere to the Convention on the Rights of the Child and allow children the right to receive religious education and to enjoy full participation in religious activities.¹⁶⁴ Freedom of religion for China's children also involves abolishing the CCP's unrelenting campaign to indoctrinate the country's youth in atheistic materialism.

Fourth, the Chinese government must allow full international access to religious communities outside of China. This includes recognizing the spiritual primacy of Rome for China's orthodox Catholics, as well as allowing foreign missionaries to enter and work in China. The practice of isolating the PRC's religious practitioners

¹⁶⁴ Convention on the Rights of the Child, arts. 13, 14, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990), *available at* <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.

from their counterparts abroad directly contradicts the concept of freedom of religion.

Fifth, the CCP must cease the practice of abusing state power under the guise of national security or public order. While every sovereign nation has the right to protect its territorial integrity, provisions for national security and public order are not to be used to defend a particular ideological position or entrench a political party.

Sixth, the PRC government needs to take immediate and drastic measures to render effective its own Labor Law. The first step is to amend the Labor Law to allow for true trade unions and collective bargaining. The party also needs to demonstrate a commitment to aggressive enforcement of the protections that the Labor Law provides workers. This means a willingness to confront widespread bureaucratic corruption as well as the will to accept a slower pace of economic growth in order to protect individual rights. The policy that individual rights are secondary to economic development should be discarded. When China's internal migrant workers are seen as citizens with inalienable rights, rather than as productive units, then, and only then, can individual liberties such as freedom of religion be enjoyed.

Finally, the *hukou*, or urban registration system, needs to be completely dismantled. Freedom of internal movement is a basic human right that all citizens should enjoy. Creating non-citizens out of China's own nationals only leads to greater exploitation and cultural biases. Urbanization is a global phenomenon and the PRC population will continue to follow this trend. Unless migrant workers are provided with the full range of legal protections, the threat of social destabilization in China will escalate.

China is a country that, in all likelihood, faces a coming economic and political storm. As the economy slows, as it inevitably will, unemployment may lead to rapid social instability. In a situation like this, China's growing floating population could become a destructive force for change.¹⁶⁵ In limiting religious freedom for migrant workers through a combination of general religious policy as

¹⁶⁵ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, Annex, U.N. Doc. A/Res/47/135/Annex (Dec. 18, 1992), available at http://www.unhcr.ch/html/menu3/b/d_minori.htm (stating in its preamble that "the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live . . .").

well as economic and urban policies, China is stifling the development of a potential buffer against social upheaval: the growth of religious structures. Religious organizations, as demonstrated in many parts of the world, can be a powerful force in meeting basic human needs in the face of various types of suffering or disorder. China would do well to abandon its adversarial policies toward religion, to take drastic measures to incorporate migrant workers into mainstream society and to realize that its citizens are its most precious resource rather than a commodity to be exploited.