



FREEDOM NOW

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Testimony Before
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Subcommittee on Human Rights
and International Development
of the Standing Committee on
Foreign Affairs and
International Trade

Jared Genser
President
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Good Afternoon. Mr. Chairman, Members of the Committee, and staff. My name is Jared Genser and I am the President of Freedom Now, a non-profit organization based in Washington, D.C., whose mission is to free prisoners of conscience through focused legal, political, and public relations advocacy efforts.¹

I am particularly pleased to be here with you today for several reasons. First, I have been following your Committee's probe of China's human rights record with great interest – especially following the recent visit of the Dalai Lama to Canada and his historic meeting with Prime Minister Martin. Second, Canada is of great importance to the People's Republic of China (“PRC”). For example, on his recent trip to Canada, Chinese Premier Wen Jiabao said “China attaches great importance to China-Canada relations” and looks forward to working together with the new Canadian leadership headed by Prime Minister Martin “in cultivating a richer and more substantive partnership of all-round cooperation between the two countries.”² Finally, on a more personal note, I feel a great affinity for Canada and the Canadian people as my wife is Canadian and we spend a great deal of time with her family who live in both Toronto and Montreal.

In my testimony today, I plan to discuss my views on the human rights situation in China using the arbitrary detention of individuals in both China (and Tibet) as a way to illustrate the broader challenges to all of us who care about improving the human rights situation there.

Almost one month ago, after the defeat of another United States resolution on the human rights situation in the PRC at the U.N. Commission on Human Rights, Chinese Foreign Ministry Spokesman Kong Quan stated “[w]e urge the U.S. side to face reality squarely, draw lessons from this failure, abandon confrontation and tackle its human rights differences with China properly through dialogues and exchanges.”³

¹ For more information on Freedom Now, please see www.freedom-now.org.

² “China Pledges to Enhance China-Canada Cooperation,” Embassy of the People's Republic of China in Canada (Ottawa), December 22, 2003.

³ “Foreign Ministry Spokesman Kong Quan's Statement on China Foiling Another Anti-China Resolution at the UN Commission on Human Rights,” Chinese Ministry of Foreign Affairs, April 16, 2004.

I am here today because sadly my experience has been that despite their strong rhetoric about the importance of dialogue over confrontation, the PRC is frequently unwilling to engage in these conversations. I personally support engagement with China. I agreed with the decision of the United States to grant permanent normal trading relations to China. I have promoted increasing both the quantity and quality of international exchanges between China and other countries in the world. And have a deep respect for China and the Chinese people.

Yet, it is because the PRC is unwilling to engage in meaningful dialogue on human rights in private, that those of us who care about these issues have no choice but to speak about them publicly.

A prime example of the PRC's unwillingness to engage in dialogue can be found in the case of Dr. Yang Jianli, a Chinese national and U.S. permanent resident with doctorates from Harvard and the University of California at Berkeley, who was blacklisted after the 1989 Tiananmen tragedy. I have had the privilege of working with Dr. Yang's wife, Christina Fu – a woman of tremendous strength and fortitude – over the past two years since her husband was detained in China.

I first met Yang over six years ago when we were students together at the Kennedy School of Government. Former Chinese President Jiang Zemin was scheduled to speak on campus, and we met at a gathering of many Harvard students who were going to organize the protests against his visit. When President Jiang spoke on November 1, 1997, it was the largest protest Harvard had seen since the Vietnam War, with over 4,000 protesters. Yang spoke eloquently to the crowd about his love for China and what he personally witnessed in Tiananmen Square.

Over two years ago, Yang made a fateful decision to return to his country. He heard about the labor unrest in northeastern China and wanted to observe it for himself. After the PRC detained him on April 26, 2002, it had the opportunity to press what could have been a routine case against him for illegal entry. Instead, by systematically and harshly violating Yang's human rights and subsequently charging him with espionage, the PRC transformed his case into an

international cause célèbre and an ongoing irritant in U.S.-China relations. How could this happen?

During his first year of detention, in violation of both Chinese and international law, Yang Jianli was held *incommunicado* and in solitary confinement, denied access to counsel, family and all reading materials and was interrogated by PRC authorities over 100 times. In addition, the PRC virtually ignored the entreaties of dozens of U.S. Senators and Members of Congress, Members of the European Parliament, and even Archbishop Desmond Tutu.

On June 4, 2003, the United Nations Working Group on Arbitrary Detention – consisting of representatives from Algeria, France, Hungary, Paraguay, and Iran – made public its ruling that Yang was being held in violation of international law.⁴ Seemingly oblivious to how unbelievable it sounded, the PRC indignantly insisted it was meticulously complying with its own and international law and condemned the opinion as an unwarranted interference in their internal affairs. This statement earned a swift rebuke from the U.S. State Department, which immediately called for Yang's release. Shortly thereafter, Congressional resolutions calling for Yang's release passed unanimously in both the U.S. Senate⁵ and U.S. House of Representatives.⁶

Let me pause for a moment on the statement that the PRC used after the U.N. decision – and which it often uses in human rights cases – that external opinion is an unwarranted interference in its internal affairs. Anyone who is familiar with or practices international law should reject this statement out-of-hand. Despite regular statements like this, the PRC voluntarily signed the International Covenant on Civil and Political Rights on October 5, 1998. Notwithstanding its failure to yet ratify the Covenant, China has an obligation to not undermine the object and purpose of the treaty by actively violating any of the rights of its citizens contained in the Covenant. Furthermore, merely by signing the treaty, it welcomed international scrutiny – both through the United Nations, by other signatories, and NGOs – of its compliance with the treaty.

⁴ See U.N. Working Group on Arbitrary Detention, Opinion No. 2/2003, Adopted May 7, 2004.

⁵ S.Res. 184 was adopted unanimously by the U.S. Senate on July 29, 2003.

⁶ H.Res. 199 was adopted unanimously, in a roll call vote of 412-0, on June 25, 2003.

Yang was finally put on trial in China, more than 15 months after first being detained, on August 4, 2003, in the Beijing No. 2 Intermediate People's Court. On December 1, 2003, the time period under Chinese law for the court to issue a verdict expired. He has been held in violation of Chinese law for over six months since then – in a Chinese style political-legal gridlock.

Although China has no jury system, in politically sensitive cases it often has the functional equivalent of a “hung jury,” decision-makers who cannot agree on a verdict despite long deliberations. In such cases, the decision-makers are the unidentified Communist Party officials. Is it a conflict between the new leadership of Hu Jintao and the old leadership of Jiang Zemin? Is it a conflict between the Ministry of Foreign Affairs which is more sensitive to external opinion and the Ministry of State Security which is focused exclusively on maintaining order in China? Or is it just plain bureaucratic bumbling? The simple answer is we don't know. What we do know is that Yang Jianli has been held in China for more than two years and that there is no end in sight to his detention. The criminal justice system in China is opaque – and even more so in these types of cases.

What we do know is that Yang Jianli's ongoing detention in violation of Chinese law is not atypical. In June 2003, the National People's Congress resolved to put an end to the “chronic disease” of illegally prolonged detention. According to *Progress in China's Human Rights Cause (2003)*, a report issued by the PRC on April 1, 2004, the Chinese Government corrected 25,736 cases (mostly pre-trial) during that year. In addition the report touts the “strict system for investigating and dealing with extended detention.” Despite the general progress, however, Yang Jianli's case is a high-profile and exceptionally disturbing counter-example. The “special telephones and email addresses for handling reports on extended detention” put in place to “strengthen public supervision” have been worthless. And a Petition submitted by Yang Jianli's family to the National People's Congress on March 12, 2004, has been completely ignored.

Sadly, there are thousands of Yang Jianli's in China – few with his high profile perhaps – but many in prison for articulating their aspirations that China provide additional freedom for its people. Before commenting further with my recommendations for what can be done – given the

context for these hearings taking place – I also wanted to provide some brief comments about two other high-profile prisoner cases regarding Tibetans.

The 11th Panchen Lama (Gedhun Choekyi Nyima)

In May 1995, Gedhun Choekyi Nyima, the six year-old boy identified by His Holiness the Dalai Lama as the 11th Panchen Lama, disappeared. In 1996, the PRC admitted to holding the boy and his family in “protective custody,” thereby admitting to his kidnapping.

After repeated attempts to locate and visit the boy, not one international agency or human rights organization has been allowed to meet with the Panchen Lama or his family, and their condition remains uncertain.

Furthermore, in an attempt to establish their pre-eminence in all internal affairs of China, political or otherwise, the atheistic Chinese government nominated and selected their own 11th Panchen Lama in November 1995. Their selection, a six year-old boy named Gyaltzen Norbu, is another young victim in China’s plan to control the Tibetan people, their religion, and their nation.

Tenzin Delek Rinpoche

Tenzin Delek Rinpoche is a highly respected Buddhist leader in Tibet. According to Human Rights Watch, “For more than 10 years, Tenzin Delek struggled to develop social, medical, educational and religious institutions for the impoverished nomadic Tibetan communities in Sichuan province. He also worked to preserve the area’s fragile ecological balance in the face of unbridled logging and mining activities.” Rinpoche was also an advocate of the Dalai Lama’s philosophy of non-violence.

Rinpoche was arrested along with Lobsang Dhondup in April 2002 in connection with a series of bombing incidents, with which he was allegedly involved. At closed trials in December 2002, both men were sentenced to death, but Tenzin Delek Rinpoche was given a two-year reprieve. In response to international pressure, a fair and open retrial was promised by the Chinese

government. However, at a secret retrial in January 2003, the death sentences were upheld and Lobsang Dhondup was immediately executed. Tenzin Delek Rinpoche's two year reprieve will expire in December 2004.

Most recently, three fact-finding experts of the U.N. Commission on Human Rights issued a statement which expressed "deep concern" over situation of Tenzin Delek Rinpoche as he "might be executed at any time upon expiration of the suspension of his death sentence on December 3, 2004." The experts also shared concerns over "alleged lapses in trial proceedings" of Rinpoche and urges the authorities in China to "grant him [Tenzin Delek] a new trial ensuring respect for international norms and standards of due process."⁷

What can we conclude about the state of the international human rights dialogue with China when examining the high-profile cases of Yang Jianli, the Panchen Lama, and Tenzin Delek Rinpoche? To put things charitably, we have a long way to go.

Sadly, these cases are representative of the hundreds of thousands of widespread and ongoing human rights violations committed against individuals in the People's Republic of China. Official government statistics indicated that there were 230,000 persons in reeducation-through-labor camps in 2003. The Supreme People's Procuratorate reported that, from 1998 through 2002, there were 308,182 persons detained for periods longer than permitted by law. Credible sources estimated that as many as 2,000 persons remain in prison for their activities during the June 1989 Tiananmen demonstrations. And the number of individuals serving sentences for the now-repealed crime of counterrevolution is estimated at 500-600; many of these persons were imprisoned for the non-violent expression of their political views.⁸

As I mentioned at the outset, I firmly believe Canada has an especially important role to play both with China and internationally. If I might, I will now conclude with three suggestions for

⁷ Statement of Mr. Ambeyi Ligabo, Special Rapporteur on the Right of Freedom of Opinion and Expression, Mr. Leandro Despony, Special Rapporteur on the Independence of Judges and Lawyers and Ms. Hina Jilani, Special Rapporteur on Human Rights Defenders, April 14, 2004.

⁸ See Country Report on Human Rights Practice in China, Released by the Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, February 25, 2004.

your consideration as to how to elevate concern about these cases and the broader and more systemic human rights conditions in China that these cases represent.

- First, I urge you to raise the human rights situation in China to the highest levels both within the Canadian Government and to the PRC directly. I know in the United States – much as here – there are numerous bilateral issues with China – in our case involving North Korea, the war on terror, and the \$100 billion trade deficit, to name a few. Nevertheless, it is critical that the Chinese leadership understand that as freedom-loving people, we will all continue to care about the extent to which the PRC is abiding by its commitments under its own and international law. It is also important not to allow the PRC to use individual prisoner releases as a public relations tool to deflect attention from their record. These cases are symptomatic of broader problems and while each of the cases I described need to be resolved, their resolution is only a small step in the direction of real political, judicial, and legal reform.
- Second, I urge you to engage in dialogue with the private sector to apply pressure on to the PRC in business terms. Bilateral trade between Canada and China was over \$20 billion in 2002. China (not including Hong Kong) is Canada’s third largest national trading partner, after the United States and Japan, and Canada’s fourth largest export market after the United States, Japan and the United Kingdom.⁹ In my view, this gives your Government and private sector substantial leverage with the PRC. In simple terms, as much as the PRC may resent “unwarranted interference” in their affairs, their repression of their own people has real business implications. The onslaught of negative news stories about the repression of democracy in Taiwan and Hong Kong, the oppression of the Tibetan people, and numerous other violations will eventually impact Canadians’ buying habits. The attention on China’s human rights record will only increase in the run up to the Olympics in Beijing in 2008. China surely does not aspire to be the next Burma, at least in terms of the real economic back-lash against its human rights record.

⁹ “China-Canada Trade and Investment,” Embassy of Canada in China (Beijing), November 28, 2003.

- Finally, I would urge Canada to continue its efforts multilaterally to apply pressure on to the PRC. I, for one, cheered Canada's recent election to the U.N. Commission on Human Rights for the 2005-2007 term. Using the Commission and other fora, Canada can exercise its influence to increase both diplomatic and public pressure on the PRC.

While there is clearly a long way to go, we should all take inspiration from the wisdom of Chinese philosopher Confucius who said "Faced with what is right, to leave it undone shows a lack of courage."

Thank you. I am happy to answer any questions.

Biography of Jared Genser

Jared Genser is the President of Freedom Now and an associate in the federal affairs and legislative practice group of Piper Rudnick LLP in Washington, D.C. Previously, Jared was a management consultant with McKinsey & Company, the global strategy consulting firm. Before forming Freedom Now, he represented James Mawdsley, a British national who served 416 days of a 17-year sentence in solitary confinement in Burma for handing out pro-democracy leaflets there. Jared holds a B.S. in human service studies from Cornell University, a Master in Public Policy from the John F. Kennedy School of Government at Harvard University, and a J.D., *cum laude* from the University of Michigan Law School. He has published opinion-editorials on human rights topics in such publications as the *Washington Post*, *Asian Wall Street Journal*, *International Herald Tribune*, and *Washington Times*.

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