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CABINET DU PRÉSIDENT

March 19, 2007

Mr. Jason Kenney, M.P.
Chair, Subcommittee on International Human Rights
Foreign Affairs and International Development Committee
House of Commons
Ottawa, ON K1A 0A6

Dear Sir:

Re: Study on Human Rights in China

I am writing further to our letter of December 6, 2006, to share some of the knowledge and experience of the Canadian Bar Association (CBA) concerning Canada's role in promoting human rights in China. The CBA commends the Subcommittee on International Human Rights for undertaking a study of Canadian policies and programs in this area. We regret that your schedule will not permit an opportunity for us to expand on these comments in person.

The CBA's perspective on Canada's role in promoting human rights in China is guided by the work of its International Development Committee (IDC). The IDC's mission is to promote the rule of law in developing and transitional countries. Over the past fifteen years, the IDC has delivered legal and justice reform and capacity-building projects in 29 countries across Asia, Africa, Central Europe and the Caribbean. Since 1994, with the financial support of the Canadian International Development Agency (CIDA), the CBA has successfully worked with several partners in China to promote human rights and increase access to justice in that country.

The CBA believes that Canada should strengthen its efforts to promote human rights in China. Significant and tangible progress is being made, and Canadian support should not be reduced or suspended at this time. Disengagement would shut Canada out of China's reform process, making it impossible for Canada to play a constructive role in promoting human rights and democracy in China, contrary to the government's stated foreign policy priorities. Maintaining initiatives that broaden support for change in China is consistent not only with Canada's own interests, but also with our moral responsibility to uphold the fundamental human rights of men, women and children around the world.



The CBA's Work

Through its research and experience, the CBA has learned that building the rule of law and protecting human rights abroad cannot be successful without champions in the host country. In some cases, support comes from the “top” through strong political commitment and work with government institutions and ministries. In other cases, civil society or “bottom-up” is the better starting point for engagement. In the longer term, neither strategy can be successful without engaging a range of actors.

In China, the CBA is using both a “top-down” and “bottom-up” approach. We are working with the Chinese Ministry of Justice (MOJ) to improve its ability to support the development of a national legal aid system in China. Conversely, our work with the All China Lawyers Association (ACLA) has strengthened the institutional capacity of the bar and its members, leading to better representation and advocacy by lawyers throughout the criminal justice process. This is a prime example of working to build a stronger civil society to build a constituency for promoting change from within.

The CBA's approach is to work with the same partners over an extended period to ensure strong and effective working relationships. This approach is more likely to increase the long-term sustainability of our projects, and reduces the risk of one-off events becoming simply public relations opportunities. Together with CIDA, the CBA works hard to identify reform-minded elements in China that are committed to change.

Criminal Justice Reform

The CBA's efforts in China focus on promoting fundamental human rights, including the presumption of innocence, the right against arbitrary detention, the right to counsel, and the right to remain silent. In Canada, these rights are enshrined in the *Charter of Rights and Freedoms*; internationally they are found in primary legal documents such as the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*.

Criminal defense lawyers are on the front line in defending basic human rights in the criminal justice system. The criminal justice system in China is rife with incidents of torture, arbitrary detention and denials of due process. Despite these obstacles, China's lawyers play an increasingly active role in encouraging reform and fostering public awareness of legal rights.

Last year, for example, *The New York Times* documented a Chinese woman's struggle for compensation from her government for contracting HIV/AIDS through an infusion of contaminated blood. Lawyers, journalists and other advocates took up the woman's cause, and although harassed by government officials and police, won small victories that were unimaginable a few years ago. This highlights the existence of a new class of advocates who now use the country's legal system to fight for social justice.

Uncounted millions of Chinese, from the rich cities of the east to the impoverished countryside, are pushing an inflexible political system for redress over issues ranging from shoddy health care and illegal land seizures to dire pollution and rampant official corruption.¹

The CBA's ongoing collaboration with the ACLA has played an important role in this evolution. In 1994, the CBA became the first foreign bar association to sign a cooperation agreement with the ACLA, with the goal of strengthening it as an organization and developing the skills of its members. As a result, the CBA is now the ACLA's longest-standing and largest foreign collaborative partner.

¹ French, Howard W., “Chinese Turn to Civic Power as a New Tool.” *The New York Times* 11 April 2006: A1.



Since 2004, the CBA has supported the ACLA's efforts to mobilize and engage their members in criminal law advocacy and reform. This four-year project includes technical assistance to the ACLA to develop its Criminal Law Committees (CLC), professional skills training for criminal lawyers, capacity building to support advocacy for reforms to the criminal laws within the bar and the promotion of greater public awareness of the role of lawyers in the legal system in general and the criminal justice system in particular.

CIDA's support of the CBA-ACLA project is enabling a large, geographically broad and educated advocacy group – the legal profession – to increase demands for improvements to the protection of human rights and the rule of law within China. Enabling Chinese citizens to voice their position is a far more powerful force for change within Chinese culture than having foreign advocacy groups and governments pressure the Chinese government.

The project is educating lawyers and the public in every province in China about human rights in Canada, including the presumption of innocence, the right to silence and the right to counsel. Through extensive advocacy training, the project is also training lawyers to become better advocates for their clients. For many, it is the first opportunity to learn how a Western criminal justice system works in practice, how and what rights are protected and the important role that lawyers play in asserting clients' rights. They also learn how to use their own system more effectively.

The ACLA has used knowledge of the Canadian justice system and international legal standards gained through this project to call for the Chinese government to introduce significant reforms to the criminal justice system that directly impact on human rights. For example, the national CLC, through broad consultation with its members, submitted proposals to the Chinese government to reform the criminal procedure law and enhance legal protections for those suspected or accused of crimes. Also, the CLC is drafting Death Penalty Defense Guidelines that would create a role for defense lawyers in reviewing death penalty cases before appellate courts.

Finally, the CBA-ACLA project supports the ACLA in its evolution from an arm of China's MOJ to a civil society organization with a voice independent of the government. As a recent Canadian report noted, independence of the bar is a necessary condition of an independent judiciary and is therefore critical to ensuring the rule of law.² A justice system cannot possibly protect fundamental human rights if it "...does not first protect that which makes it possible to benefit from such guarantees, namely every citizen's ... right to effective, meaningful and unimpeded access to a court of law through the aegis of an independent bar."³ Since 1994, the ACLA has made structural and institutional changes that demonstrate increased independence. For instance, it is now almost entirely financially self-sustaining, and, unlike in previous years, the presidents of the national and most provincial level branches come from the private bar rather than the MOJ. As the ACLA becomes more institutionally and structurally independent, the strength of its voice as an advocate for reform will also increase.

Legal Aid and Community Legal Services

Improving laws and building the capacity of defense lawyers to use those laws effectively is critical to protecting basic rights. But for many, those rights are meaningless without access to justice.

² Law Society of Upper Canada. *Task Force on the Rule of Law and the Independence of the Bar*. Final Report to Convocation, November 23, 2006 at 3.

³ *Ibid* at 9.



In many countries, including China, the poor and disadvantaged are confronted by corruption, lack of accountability, abuse, violation of rights and discrimination at the hands of landlords, employers, local government officials and agencies, police and spouses. Laws and regulations can discriminate against poor and other disadvantaged groups or be arbitrarily and inequitably applied and enforced to the detriment of those groups. The result is that the poor, and particularly women and other disadvantaged people, often have problems accessing basic services and entitlements, obtaining social and economic benefits and asserting their rights and interests. This increases their marginalization, limits their participation in society and impedes them in addressing their own deprivation or improving their own living conditions.

These individuals are limited in asserting their own rights by constraints in using the legal system to address their concerns. These barriers include high costs, limited legal knowledge and awareness, low quality legal representation and a lack of confidence in the legal system.

One of the most effective ways for these individuals to gain access to legal benefits and protections is through effective and efficient legal aid services. Legal aid services can provide free, competent legal representation and advice, and promote public access and understanding of legal rights. Legal aid helps people access the legal system to assert their rights within and outside the formal court process. Legal aid also helps such people collect their entitlements, obtain basic services, seek administrative review of government action and redress against arbitrary or corrupt decisions of local government officials and get court orders to protect women from domestic violence.

Legal aid and community legal services in China are in the early stages of development. The Canada-China Legal Aid and Community Services Project began in 2004 with the goal of strengthening China's legal aid and community legal services system. This project focuses on integrating and coordinating the legal aid system, training legal aid workers, and increasing public awareness and information.

The project has already resulted in the creation of Model Legal Aid Centres (MLACs) in four provinces, each with increased funding from local governments and staffing support from legal professionals, the judiciary and academics. The MLACs have reported significant increases in the number of cases they can handle, and point to specific instances where they have played an important role in matters such as difficult family law disputes and labour rights.

In one case, the Changsha Municipal Legal Aid Centre helped bring the issue of discriminatory practices against rural households to the forefront. While riding on a municipal bus, a man fell over and died. His family was initially refused compensation, but after legal aid lawyers took on the case, they found evidence that the man was flung to his death because of the driver's actions. The family was awarded substantial damages in court, but an appeal court later reduced the award because the victim was part of a rural rather than urban household. This triggered considerable media coverage and public debate, and China's Supreme Court is now considering the issue.

Other activities include advocacy for legislative improvements to protect women from domestic violence and sexual harassment. A related development is the recognition of the need for adequate social support services for victims of domestic violence. The United Nations Development Program's (UNDP) recently decided to fund a pilot duty counsel project in one Chinese province. Chinese delegates proposed the project after observing a Legal Aid Ontario duty counsel model during a study tour to Canada.

An important final aspect of the project is the collaboration with the Chinese MOJ, as a willing and enthusiastic partner in this project. As other witnesses before the Subcommittee have noted, Canadian assistance to the Chinese government must support Chinese ministries with a domestic mandate to improve the human rights situation in China.



Conclusion

A fledgling human rights community that includes lawyers is emerging in China, but it needs international support to thrive. The CBA's projects are advancing real reforms to the institutions and the laws that bolster human rights in China and ensure that human rights will be genuinely protected.

CIDA's support for human rights, democratic development and good governance programs in China has allowed the CBA to undertake projects that are building the capacity for internal change. As one expert recently noted, "there have been a good range of CIDA programs and good governance projects in China that have, over the years, made significant contributions to the rule of law and human-rights improvements."⁴

The CBA is not alone in its efforts. We have collaborated with other Canadian and foreign organizations working on similar issues in China, ensuring that our activities complement and reinforce each other and increase and broaden the impact of our projects.

Canada has the expertise and the experience to take on a larger role in promoting human rights and democracy in China.

- Internationally, Canada's bijuridical legal system (common law and civil law) is well-regarded and its jurists well-respected. Canada's experience with participatory civil and criminal justice reform processes has also been particularly valuable.
- Canada's overall culture of rights and the strength of its institutional relationships in China have resulted in a history of successful engagement.
- Canada has demonstrated the ability to work successfully in a field that requires significant political and cultural sensitivity, an asset particularly important in China.

In recent years, several countries have become more deeply engaged in the human rights arena in China. Reducing or suspending Canadian support for human rights programs at this point would risk moving Canada to the sidelines, just when Canada has managed to make a unique and significant contribution to human rights in China.

We hope these comments will be valuable in your consideration of this important subject, and we would welcome an opportunity to discuss our experiences with the Subcommittee at greater length.

Yours truly,

(original signed by J. Parker MacCarthy)

J. Parker MacCarthy, Q.C.

⁴ Jiang, Wenran. "It's a mistake to blow hot and cold with China." *The Globe and Mail* 19 Jan. 2007: A13. Jiang is the Director of the University of Alberta's China Institute.