



Chinese Human Rights Defenders (CHRD)

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Promoting human rights and empowering grassroots activism in China

Reining in Civil Society:

The Chinese government's use of laws and regulations to persecute freedom of association

While the Chinese government outwardly employs rhetoric about moving towards “greater rule of law”, it has become more skillful in persecuting individuals who organize outside of its control with the use of vague laws, regulations and tax codes. Any independent organization which the government perceives as a threat to its power risks official retaliation. Apart from suppressing individuals and organizations, a further purpose of the measures taken by the government appears to be intimidation, in order to dissuade others from organizing. The effect is to inhibit the growth of non-governmental organizations and, more generally, civil society. Rather than promoting the rule of law, these actions achieve just the opposite: They undermine it and emphasize that the Chinese Communist Party (CCP) is above the law and perceives the legal system primarily as a means of ensuring its control over the populace.

Two main mechanisms are employed to restrict freedom of association. First, stringent administrative regulations make it difficult for organizations to legally register at their inception. They are then under constant risk of being labeled “illegal”, at which point, a panoply of law enforcement measures are employed to shut them down. This report analyzes the steps taken by the government to infringe upon citizens' freedom of association and examines the experiences of individuals and groups who have organized formally and informally to address political, social and economic issues.

Administrative regulations stipulate that unless an organization is approved by and registered with the Ministry of Civil Affairs (MCA), it is illegal. To register, the applicant must meet a number of requirements that are impossible to fulfill unless the organizers are well-connected to the authorities. Ordinary citizens and especially critics of the government are rarely able to obtain approval. Unable to register with the MCA, many organizers are forced to register their organization with the State Administration of Industry and Commerce (SAIC) as a for-profit legal entity. Without registration with the MCA, these organizations are still considered “illegal” and they often suffer official harassment as a consequence.

The recent persecution of Open Constitution Initiative (or Gongmeng), a Beijing legal-aid center forced to register with the SAIC, is a case in point. On July 14, Gongmeng received notification from tax authorities that they were being fined RMB 1.42 million for “tax evasion”. Three days later, the Beijing Municipal Bureau of Civil Affairs declared the organization “illegal”, raided its office and formally banned it. Gongmeng's director, Xu Zhiyong (许志永), and one of its staff members disappeared on July 29. It is

believed that they have been criminally detained on suspicion of “tax evasion”. In the past year, Gongmeng rose to prominence due to its active involvement in investigating “sensitive” cases, such as the tainted milk scandal and the suppression of protests in the Tibetan areas in March 2008. In retaliation, various governmental authorities acted in concert to swiftly clamp down on the outspoken organization in the name of “law enforcement”.

Similar charges, such as “failure to comply with the required accounting procedures”, have previously been used by the authorities to intimidate organizations. Even if they are not directly targeted by the government, organizations registered as for-profits are generally at an unfair disadvantage compared to officially-backed organizations registered with the MCA in terms of security of operation, tax regulations, and access to funding and other resources.

In the area of labor organizing, the law is used to deny workers the right to form independent unions. The Trade Union Law stipulates that the All-China Workers Trade Union, a government-affiliated organization, is the only union allowed in China. Those who attempt to form independent unions are either ignored or have their applications denied, and organizers are often detained. In the official union, the right of members to choose their leaders is heavily curtailed. Decisions are made by union leadership, which in turn is controlled by the CCP. As a result of these restrictions stipulated in the Trade Union Law, workers find the official unions do not represent their interests in disputes with their employers. Workers often resort to alternative forms of associations, such as collective petitioning, choosing representatives to negotiate with employers, and going on strike. These actions are invariably labeled “illegal” and the organizers are punished.

While establishing and operating independent organizations and labor unions is precarious, nothing assures official retaliation more than forming political associations. Any effort to establish political parties in opposition to, or even simply independent from, the ruling CCP is invariably crushed. Without fail, the Chinese government detains and imprisons the party leaders using crimes such as “subversion of state power”, declaring the party “illegal” and banning it. Even political discussion groups are closely watched and are at constant risk of harsh crackdown.

Besides maintaining tight control over formal forms of association, the Chinese government also treats spontaneous and informal initiatives to organize with strong suspicion, even when they exist only virtually. When citizens come together to aid fellow citizens in distress, such as during the Sichuan Earthquake in May 2008, or when they sign public letters expressing their discontent with officials and making policy suggestions, the government takes the organizers into police custody and intimidates those who join the initiatives.

Many Chinese citizens, however, have persevered in exercising their right to freedom of association despite official obstacles and potential punishment, persistently pushing the boundaries. Even within organizations closely affiliated with the government, there are individuals who press for greater freedom from state control. Efforts by lawyers to press

for direct elections of the leaders of the officially-controlled Beijing Lawyers Association is one recent example. Not unexpectedly, those who called for direct elections met official retribution. The lawyers who took lead in the effort lost their license to practice law in May of this year. Significantly, both this act and the closure of Gongmeng targeted lawyers and those who provide legal aid—clear and direct government attacks on the rule of law.

The report offers a set of recommendations to address the current abuses. Since many of the infringements of citizens' right to freedom of association originate in a legal and regulatory framework designed to violate this right, the recommendations focus on changing it. They call for:

- a constitutional review of these laws and regulations;
- the drafting of an Association Law to protect freedom of association;
- the ratification of the International Covenant of Civil and Political Rights (ICCPR);
- the removal of the Chinese government's reservation to Article 8.1(a) of the International Covenant of Economic Social and Cultural Rights (ICESCR) which guarantees the right to form independent unions;
- the interpretation of Article 105 of the Criminal Law to clarify and precisely specify conditions under which an act of association may constitute “inciting subversion of state power” or “subversion of state power”;
- the end of the persecution of individuals for peacefully exercising their right to freedom of association and the release of those imprisoned for exercising this right.

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Section I: Administrative Regulations Governing Organizations

According to data published by the Ministry of Civil Affairs, the total number of organizations has steadily increased in the last eight years, although the growth rate seems to have leveled off in recent years compared to the beginning of the decade (see Table 1)¹. The number of foundations has also increased, at least in the last five years where data is available, to 1390 by the end of 2008.²

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total no. of organizations ³ (in thousands)	154	211	244	266	288	319	353	386	398
Rate of increase		37.0%	15.6%	9.0%	8.3%	10.8%	10.7%	9.4%	3.1%
Total no. of foundations					936	975	1144	1340	1390
Rate of increase						4.2%	17.3%	17.1%	3.7%

These numbers, however, seriously underestimate the real number of organizations in China.⁴ One scholar estimates that only 10% of China's organizations are registered.⁵ This is because the government has erected a number of serious barriers to forming and maintaining organizations.

Despite being a human right proclaimed in Article 22 of the International Covenant of Civil and Political Rights (ICCPR), which China signed in 1998, and despite being guaranteed by Article 35 of the Chinese Constitution, the right to freedom of association is not recognized in any of China's domestic laws. Without effective legal safeguards, it remains merely an empty promise to Chinese citizens, who have no legal tools to hold officials liable for violating this right.

There is currently no law governing the act of association, formal or informal, in China. During the 13th Party Congress in 1987, the Chinese Communist Party (CCP) discussed formulating an "Association Law" and asked the MCA to produce a draft. The MCA submitted a draft to the State Council in 1993. Yet the National People's Congress (NPC), China's legislature, never put the draft law on its legislative agenda. Since then the draft law has not been discussed. In the absence of an Association Law, several administrative regulations exist which serve the purpose of regulating, and mostly restricting, citizens' exercise of the right to association:

- Regulations for Registration and Management of Social Organizations (社会团体登记管理条例)
- Provisional Regulations for the Registration and Management of Citizen-Managed Non-enterprise Units (民办非企业单位登记管理暂行条例)

- Temporary Measures Banning Illegal Popular Organizations (取缔非法民间组织暂行办法)

Regulations for Registration and Management of "Social Organizations"

The current "Regulations for Registration and Management of Social Organizations" (hereafter referred to as "Regulations for Organizations") was passed by the State Council on September 25, 1998, and became effective on October 25 of the same year, replacing an earlier version which had been in effect since October 1989.⁶ "Social organizations" (社会组织 *shetuan zuzhi*), according to the regulations, refer to "non-profits...organized voluntarily by Chinese citizens to carry out activities that realize the common will of its members in accordance with its charter"⁷. Registered social organizations usually include groups whose work is related to areas such as culture, education, environmental protection, health care and legal advice. They are often professional organizations, charities, churches, public-interest groups or unions. Examples include the All-China Women's Federation (ACWF, 全国妇女联合会), the Beijing Lawyers Association (BLA, 北京市律师协会) and the Cultural Development Center for Rural Women (北京农家女文化发展中心).

The purpose of Regulations for Organizations is clear from its first article, which purports to "guarantee the freedom of association of citizens" but serves in fact to "strengthen the registration and management of social organizations". In the next thirty-nine articles, the words "freedom" and "freedom of association" never appear. There are, however, thirteen articles listing actions in which organizations are prohibited from engaging.

According to the Regulations for Organizations, all social organizations have to register with and must be approved by the government (see Section II). The regulations also outline stringent restrictions on modes of operation once these social organizations successfully register. Articles 26, 28 and 31 stipulate that social organizations are subject to an annual review by their sponsoring office as well as the MCA. Article 19 stipulates that, although social organizations may set up affiliated social organizations, they are not allowed to establish branches in other areas of the country (e.g. "regional offices" of the head organization. . A registered social organization which violates these provisions faces punitive measures, which may include a warning, temporary suspension of activities, banning of the organization or criminal liability for the people responsible for the violation.

Provisional Regulations for the Registration and Management of Citizen-Managed Non-Enterprise Work Units

The current "Provisional Regulations for the Registration and Management of Citizen-Managed Non-Enterprise Units" (hereafter referred to as "Regulations for Non-Enterprise Units") was passed by the State Council and came into effect on October 25, 1998, at the same time as the Regulations for Organizations.

According to the regulations, “non-enterprise unit” refers to “organizations organized by enterprises, institutions, social organizations and other social forces as well as individual citizens that engage in non-profit social service activities using non-state-owned resources.”⁸ “Citizen-managed non-enterprise units” (民办非企业单位) and “social organizations” (社会团体) are very similar types of organizations. The small difference between them is that the latter usually refers to organizations established by individuals while the former refers to those established by government agencies or companies (private or public).

Similar to the Regulations for Organizations, Regulations for Non-Enterprise Units stipulates measures to limit citizens' freedom of association. The applicant non-enterprise unit needs to be examined and approved by the government in order to register, and once registered it is closely watched by its sponsoring office and the MCA and punished when it violates any of the regulations.

Because “social organizations” and “non-enterprise units” are similar and are subject to identical restrictions and an equal amount of state control, they are collectively referred to as “organizations” unless stated otherwise for the purpose of this report.

Temporary Measures Banning Illegal Non-Governmental Organizations

The MCA passed "Temporary Measures Banning Illegal Civic Organizations" on April 10, 2000, which specifically declares an organization “illegal” if it:

1. has started planning activities without authorization;
2. is unregistered and unauthorized but engages in activities in the name of a social organization or citizen-managed non-enterprise unit; or
3. continues to hold activities after its registration has been cancelled.

Although similar prohibitions and threats of punishment against “illegal” organizations already existed in the two previous regulations promulgated by the State Council two years earlier, the Temporary Measures re-iterates them and gives the MCA some sort of enforcement power to close down these organizations. The timing of this additional regulation may reflect the authorities’ anxiety in response to a widespread sense of social discontent, restlessness and desire for change in Chinese society. Many progressive Chinese have turned to organizing organizations as a viable and relatively safe avenue to push for social reforms. This momentum has provided the backdrop for the development of what we now recognize as the “rights defense movement” (维权运动).

Section II: Barriers to Registration for Organizations

Taken together, these three regulations provide the government with a basis upon which it can willfully interfere with citizens' freedom of association. The regulations act as filters, granting registration and a proper legal identity only to those organizations that meet with official approval. This is filtering is primarily performed by two crucial requirements: first, that the applicant organization must find a government agency willing

to act as a sponsor, and second, that it must fulfill the membership and funding requirements as outlined in the two regulations.

Finding a Government Agency Willing to Act as Sponsor

Both the Regulations for Organizations and Regulations for Non-enterprise Units stipulate that, in order to register, the applicant organization must first obtain the approval of a “business/management sponsoring office” (业务主管单位), which is a government department under the State Council or local government at county level and above, or an organization empowered by one of these government departments, in a related professional area. For example, an applicant organization focused on keeping a local river clean might ask the local Bureau of Environmental Protection to be its sponsor. In practice, as the term “department in a related professional area” is vague and there are no lists of sponsoring offices at the national or local levels, applicants are often left to track down potential sponsors on their own.

Ordinary citizens without connections to the authorities are unlikely to obtain the approval of these offices. Because these offices are not obligated to act as sponsors, they are unlikely to do so unless the applicant organizations have connections to relevant officials within the office, or unless sponsoring the organization might bring some profit or other concrete benefits to the office. Especially when it comes to applicant organizations whose work might be potentially “sensitive”, the government offices almost always decline the request in order to stay out of trouble from their superiors or the local police. (see Case Study 1).

Case Study 1: Wenling City Farmers’ Association

“After we have complained and stated our demands to the various levels of government... [we have been subjected to] detention, mistreatment and beatings...individual farmers in this city realize that we must unite to...collectively defend our rights according to the law.”

–Members of Wenling Farmers’ Association in “Public Letter Calling for the All-China Lawyers Association Seeking Legal Assistance”

On December 26, 2004, fifty-eight farmers from Wenling City, Zhejiang Province, upset that local officials allegedly illegally appropriated and sold farmland to enrich themselves, declared their intention to form a “Farmers’ Union” (农会, *nong hui*) to fight for their rights. The farmers established the farmers’ association as a last resort after having repeatedly complained to higher authorities about the abuses taking place without receiving a response.

Within a year of its founding, the farmers’ association had grown to more than 180 members, and it claimed to represent over 800,000 farmers from the area. On March 1, 2006, representatives traveled to the Wenling City Bureau of Civil Affairs to formally register the association. However, the Bureau refused their application on the grounds

that they lacked a sponsoring office. The farmers then repeatedly visited all the government offices with administrative or legislative mandates related to farming, such as the Agricultural Bureau and the Rural Development Office, and requested that they sponsor the association. All of these departments refused their application without explanation.

On June 16, 2006, the farmers traveled to Taizhou City Intermediate Court in Zhejiang Province to file an administrative lawsuit against the Wenling City government and demand that it appoint a sponsor to their association. The Court refused to hear the case, on the grounds that the farmers' association was "an illegal organization." The farmers also submitted a request for administrative review to the Taizhou City Bureau of Civil Affairs, but the request was ignored. On November 23, 2006, the Wenling City Bureau of Civil Affairs declared that the Farmers' Association was officially banned, in accordance with the Regulations for Organizations and the Temporary Measures Banning Illegal Civic Organizations. The farmers continued to press their case, and in January 2007 they issued a number of public letters addressing the central government in which they described their plight.

At the time of writing, the farmers' application to form an association continues to be ignored. The group is still viewed as "illegal organization" and farmers in Wenling City have yet to secure any compensation for the farmland confiscated by the local government.

The two regulations do not stipulate any legal responsibility for the sponsoring offices during the process of examining potential organizations, nor do they outline any procedures, criteria or time limits for approving or rejecting applications. They also do not provide for judicial remedies in the cases of organizations whose applications have been rejected or ignored by the sponsoring office. As a result, when the sponsoring office denies or fails to respond to an application, there is very little an applicant organization can do to appeal the decision or challenge the delay (see Case Study 2).

Case Study 2: No Response from the Ministry of Health after Six Years of Application

Between 2000 and 2006, more than a hundred medical experts applied, on numerous occasions, to the Health Department seeking its consent to sponsor a national eye care association. Six years passed without a formal response from the Health Department. In March 2006, one of the applicants sued the Health Department for failing to respond to their application. The Health Department argued that even though it never issued a written response, it told one of the applicants about its decision. The Department also argued that the application did not meet all its requirements and it repeatedly sent the application back for supplementary information. The department further argued that the lawsuit had no legal basis since the time limit for filing an administrative lawsuit had already expired. After two hearings, the Beijing Number One Intermediate Court rejected the doctors' lawsuit against the Health Department.

Meeting Fiscal and Membership Requirements for Registration

Even if an organization manages to obtain the backing of a sponsoring office, it will need to register with and be approved by the MCA. The Regulations for Organizations outline some stringent requirements for registering with the MCA: Article 10 of the Regulations for Organizations states that “national-level organizations must have at least 100,000 RMB to cover their activities”, while “local social organizations...must have at least 30,000 RMB.” For a local organization in China, raising that amount of funding is an extremely difficult task, as the average annual income of a rural resident was 4,761 RMB in 2008.⁹ Article 10 further stipulates that: “to found an organization, the organization must have more than 50 individual members.” Again, it is very difficult for new organizations to satisfy this requirement, because only a small proportion of Chinese citizens are willing and able to take part in founding these sorts of organizations. Article 10 leaves organizations in somewhat of a Catch-22: they are not allowed to hold any activities before they are properly registered, and yet without holding activities they remain unknown to the local community and are therefore unable to raise the required funds and membership for registration.

Because of the restrictions set out in the two regulations, organizations that are able to register usually have links to government officials or are created as an offshoot of a state organ. Though such organizations are allowed to exist, they must operate carefully within the space granted them by their government sponsors, who can pull their support if the organization acts in a way they deem inappropriate. Therefore, technically speaking, organizations successfully registered in accordance with the two regulations cannot be called non-government organizations (NGOs), as this name implies independence from direct government control. They are more accurately described as “government-organized NGOs” (GONGOs).

Section III: Operating Without MCA Approval: Consequences and Challenges

Unless an organization registers with the MCA or is exempted from registration by the Regulations for Organizations¹⁰, it is considered to be “illegal”. Nonetheless, many organizations have chosen to circumvent the two regulations and operate without registration with the MCA. These organizations generally take these different forms:

1. They exist as an affiliated organization of a registered social organization. Although they perform separate work, they have no legal identity independent of their host organization;
2. They are organizations registered as for-profit companies with the State Administration for Industry and Commerce (SAIC); and
3. They are organizations which have not registered with MCA or SAIC and they have not attached themselves to other organizations.

“Illegal” organizations face varying degrees of harassment from the authorities. Those that are more vocal in their criticism of the government and its policies, or those

organized by activists and dissidents, are often targeted for harassment and threats of closure.

Organizations which exist as part of a registered social organization

Though organizations which exist as an affiliated organization of a registered social organization are able to register with relative ease, they are still subject to the same scrutiny as their host organization once registered. To establish an affiliated organization, a host organization must submit an application to its sponsoring office and obtain its approval, after which the approval of the MCA is also required. During the annual review of the host organization, the operation of the affiliated organization is also examined. The host organization is also able to withdraw its sponsorship of the affiliated organization at any time, rendering the affiliate instantly “illegal”. Thus an affiliated organization is no more autonomous than a registered social organization, though perhaps one degree removed, as the sponsoring office of their host organizations may choose to apply pressure on the host, rather than the affiliate, if it is displeased with the latter’s work.

One of the best known environmental organizations in China, "Friends of Nature" (自然之友), is officially “the Green Culture Branch of the Chinese Academy of Culture”. At its inception, it had to register as a branch of the Chinese Academy of Culture, a registered social organization, because it was unable to find a sponsoring office. This arrangement has remained intact for over a decade. Even though there are now upwards of 10,000 members of Friends of Nature, it still has no distinct legal identity.

Organizations registered as for-profits with the SAIC

Unable or unwilling to register with the MCA, organizations register with the SAIC to obtain a form of legal status so they may raise funding and operate with some degree of legal recognition. However, registering with the SAIC has many drawbacks. First, as



Picture 1: Gongmeng's office raided

“for-profits” these organizations are subjected to more rigorous accounting requirements, and organizations are deterred from projects where these requirements are unlikely to be met. Second, these organizations are responsible for paying all kinds of taxes, which increase their operating costs. Third, non-profit organizations registered as “for-profits” are regarded with suspicion by authorities who oversee these organizations, who subject them to closer scrutiny, making it

harder for the organizations to organize activities, attract members or mobilize resources. Fourth, regulations governing tax compliance and accounting

practices of for-profit organizations give the authorities ample means to punish organizations for “tax evasion”, as seen in the recent case of Gongmeng. Fifth, with no official backing, these organizations have no sponsoring offices putting in a good word for them when the local political environment changes, and are therefore more easily declared “illegal” and shut down. Finally, because of their status as “for-profits”, foreign funders usually refrain from funding them unless they amend their constitutions and make statements to declare the non-profit nature of their work, leaving the organizers vulnerable to even more interference from the authorities.

At a meeting of SAIC-registered organizations held on September 18, 2008, Wan Yanhai (万延海), the head of Beijing's Aizhixing Institute (爱知行研究所), one of China's best known HIV/AIDS organizations, reported that his organization had been repeatedly investigated for possible fraud or evasion of taxes by officials from the PSB and the SAIC. At the same meeting, member of Beijing's Huiling (慧灵), an NGO working to defend the rights of the handicapped, spoke of having the scope of their managerial operations examined by authorities from the SAIC, who threatened to shut the group down. The Transition Institute (传知行), a research institute focused on social and political issues, was investigated by the MCA and accused of being unregistered and therefore holding unauthorized activities in the name of a social organization. The Beijing organization Dongzhen (东珍), a group helping AIDS orphans, was notified by

Case Study 3: Aizhixing Institute

Apart from having its accounts repeatedly investigated, Aizhixing Institute has also been subjected to various forms of harassment in recent years. Between 2008 and 2009, its website was once temporarily closed for a statement concerning an imprisoned HIV/AIDS activist; one of its conferences was called off after police arrived and checked the identity cards of all fifty participants; and its staff and clients suffered increased harassment during the lead-up to the Olympics in 2008.

Wan Yanhai, the head of Aizhixing, has repeatedly been called for “chats” and detained by Beijing police. Wan was disappeared between November 24 and 27, 2006. At an interview in November 2007, when asked whether he was worried about being kidnapped again prior to the World AIDS Day again, Wan said, “I try my best to maintain a free mind, but acting freely can be dangerous sometimes. So when I encounter a difficult situation, I may have to give it up [to ensure my safety].” Not long after this interview, on December 26, 2007, Wan was summoned by Beijing authorities for “a chat” while he was working in Yunnan Province. Wan had to hurry back to Beijing, where authorities picked him up in a car, then detained and interrogated him for thirty hours. Wan's family and colleagues were not able to contact him during his forced “disappearance”. Since then, Wan has been subjected to residential surveillance during “sensitive” periods, such as the China-US Dialogue in May 2008 and the 20th Anniversary of the Tiananmen Massacre in June 2009.

its bank that, since it was registered as a company, it must pay taxes on the funds it received from foreign foundations.¹¹ Less than a year after this meeting, on July 14, 2009, Gongmeng was fined 1.42 million RMB for “tax evasion”. Three days later, the organization was declared “illegal” and banned. Gongmeng’s director Xu Zhiyong (许志永) and one of its staff members, Zhuang Lu (庄璐), disappeared on July 29 and have reportedly been detained on suspicion of “tax evasion”, though their families have not received any official notification at the time of writing.



Picture 2: Xu Zhiyong

The plight of unregistered organizations

Unregistered organizations not belonging to the above two categories mostly include informal groups whose constituents meet up only occasionally. Some of these groups, which usually call themselves “salons” (沙龙), “forums” (论坛), “friendship associations” (联谊会) or “social clubs” (俱乐部), operate mostly in virtual space.

Because they have not registered with the SAIC or attached themselves to other registered organizations, they are even more at risk of being labeled as “illegal” organizations by the authorities. (Case Study 4 and Case Study 5)

Case Study 4: Sayuan Study Group

On December 18, 2006, "Sayuan Study Group" (仨元学社), an online community that promotes traditional culture, was officially banned by the Beijing Chongwen District Bureau of Civil Affairs Social Organization Office. Yao Jian (姚剑), the group’s organizer, was interrogated by staff at the Bureau. The authorities claimed that the group was banned because it "failed to legally register" and was therefore an "illegal organization."

Yao challenged this decision and filed an administrative lawsuit with the Chongwen District Court. This marked the first time that an online group was involved in administrative litigation. The lawyer for Sayuan Study Group argued that, because the group had no members or a constitution, it was not a social organization as defined in Regulations for Social Organizations; the registration procedures outlined in the regulations were therefore not applicable to the group and the punishment by the Bureau had no legal basis. The court heard the case on May 25, 2007. In the end, the matter was settled outside of court. Sayuan Study Group was allowed to continue after it changed its name to "Chinese Civilization Net" (中华文明网) on the internet.

Case Study 5: Shouguang City Kindness

In August 2007, the Bureau of Civil Affairs in Shouguang City, Shandong Province published an announcement in the local party paper, the *Shouguang Daily*, stating that "Shouguang City Kindness" (寿光市爱心) was an illegal organization, that it had been

banned and that the organization's property was to be confiscated. The "illegal" organization in question, Shouguang City Kindness, was made up of a group of Shouguang residents who volunteered to visit the elderly and help underprivileged children. It grew from a few individuals to more than 150 people in just three months. Prior to its being banned, on June 23, 2007, the volunteers organized a benefit performance to raise money for a group of six orphans. Halfway through the program, officials from Shouguang Municipal Bureau of Civil Affairs and Urban Inspection Officers (*chengguan*) arrived and ordered the performance stopped, announcing that the organization had "not completed registration" and was prohibited from holding activities.

As a volunteer group, Shouguang City Kindness was neither a social organization nor a citizen-managed non-enterprise unit, according to the two regulations. It was unable to find a sponsoring office and thus did not register with the local Bureau of Civil Affairs. Shouguang City Kindness is not alone, however, as most volunteer groups across the country are similarly unregistered and face the constant threat of being shut down.

An Unequal Playing Field

Organizations not registered with the MCA often experience difficulties attracting support and funding, especially from sources such as international foundations. On one hand, the Chinese government has publicly demonized independent organizations which solicit international funding, calling them "unpatriotic", puppets of "anti-Chinese forces" that "make China unstable", and threatened to close international foundations operating in China to prevent them from funding independent organizations.¹² On the other hand, however, the government encourages these foundations to fund official institutions and GONGOs. Moreover, many of these foundations are bound by internal guidelines which prohibit them from funding unregistered organizations. For the sake of keeping their offices open in China, most international foundations have placed restrictions on their operations which toe the official line. In this repressive environment, the vast majority of foreign funding ends up benefiting those with close ties to the government. (Case Study 6)

Case Study 6: Independent Groups Excluded from Election of NGO representatives to Global Fund

On April 24, 2007, Chinese officials ran an election to select representatives of patients and NGOs to the board of the Global Fund to Fight AIDS, Tuberculosis and Malaria coordination team in China. Many independent organizations protested the election, since the government only allowed organizations registered with the MCA to participate. Organizations excluded in the official election organized another election in line with the Global Fund's procedures on May 17 and 19. Eighty-five NGOs submitted their applications and 75 were found to be qualified, a much larger number than those cleared to participate in the official election.

On May 24, Wan Yanhai met with Qiang Zhengfu, general secretary of the Global Fund's China Coordinating Committee Secretariat and director of the international department of the Center for Disease Control in China, to discuss the election and seek a

solution. Wan challenged the official election, saying it lacked transparency and was controlled by government. In response Qiang accused Wan of making trouble on purpose.

According to Wan, the official committee has failed to seriously monitor the way international funding is used, and money has ended up in the pockets of officials rather than to the most effective organizations.

"For example, funds from a clinic in Shuangmian Village in Henan Province were used to send 40 officials from the Health Bureau to Yunnan and Thailand for a tourist trip; while some money was used to set up three cameras in a small clinic to monitor patients, which was a violation of their privacy. The clinic also used funds to hire police to harass, detain or tail HIV/AIDS activists who have been trying to set up independent services for villagers. In our opinion, money from the Global Fund has often been used not to help people, but to violate human rights." Wan said.

Although CHRD is not aware of any individuals having been imprisoned for accepting foreign funding for the purpose of organizing or participating in an organization, Gongmeng director Xu Zhiyong, detained for "tax evasion" in relation to funding received from Yale University, might be the first such person if convicted. In general, the threat of being prosecuted for receiving funding is always present. The Chinese government has routinely used activists' acceptance of foreign funding as "evidence" that they have "linked up with foreign hostile forces". In 2008, Chen Daojun (陈道军), a cyber activist and freelance writer based in Sichuan, was sentenced to three years of imprisonment and deprivation of political rights for three years for "inciting subversion of state power".¹³ Part of the "evidence" used to convict Chen were two wire transfers from the US to Chen's accounts dated March 12 and April 22, 2008, even though there was no evidence to suggest that any of the money wired was used to "incite subversion".

The overall effect of these regulations and funders' self-imposed limits is an unlevel playing field for organizations. While government-backed, MCA-registered organizations are able to enjoy legitimacy and greater resources under the shelter of the system, organizations not registered with the MCA often dwell in the uncomfortable grey area between "legal" and "illegal", constantly under the threat of pressure from the authorities.

Section IV: Workers, Unite! But Only To Join the Official Union

The right to form independent trade unions is protected by Article 8 of the International Covenant of Economic, Social and Cultural Rights (ICESCR), which China has signed and ratified. However, when the Chinese government ratified the ICESCR in 1997, it also declared a reservation on Article 8.1 (a), the right to form trade unions, stating that "The application of Article 8.1 (a)...shall be consistent with the...Trade Union Law of the PRC and Labor Law of the People's Republic of China."

Although the Trade Union Law (工会法, hereafter referred to as the "Union Law") stipulates that "trade unions are mass organizations of the working class formed by the

workers and staff members on a voluntary basis”, Chinese workers do not enjoy the right to form independent trade unions in practice. The current Union Law became effective on October 27, 2001, replacing an earlier version which was promulgated in June 1950. The Union Law put in place a hierarchical and centralized system of managing trade unions, with the All-China Federation of Trade Unions (ACFTU) at the top of the hierarchy. The ACFTU, in turn, is under the direct control of the CCP’s United Front Department. The ACFTU leadership is also appointed by the CCP authorities. Its current chairman, Wang Zhaoguo (王兆国), is a high-ranking cadre in the CCP. The ACFTU therefore functions as part of the party-state, as then do the unions under the leadership of ACFTU.

The Union Law stipulates that a union at a higher level “exercises leadership” over ones at a lower level, which includes overseeing the establishment of new unions at a lower level. Thus, it effectively prohibits workers from setting up an independent union outside of the control of the ACFTU. Moreover, although a union’s leadership is chosen or removed by the workers according to the relevant procedures outlined in the Union Law, a higher-level union always holds the power to make the final decision.

Because the ACFTU and its trade unions are not formed spontaneously, and their leadership is not freely chosen by the workers, they represent the interests of the authorities instead of those of their members. Unable to express their demands and defend their rights through official unions, workers have resorted to alternative forms of association, such as releasing public letters addressing the authorities or collectively petitioning government offices. However, as these forms of association are outside of the realm of the Union Law, workers often meet official retaliation for exercising their rights to associate and express their demands. (See Case Study 7)

Case Study 7: Didao Mine Workers

In 2008, 3,354 workers at the Heilongjiang Jixi Mining Group sent a public letter to the State Council. The public letter points out that, in 2004, Heilongjiang Jixi Mining Group “re-structured” the state-owned Didao coal mine and laid off thousands of workers without proper procedures or compensation. The workers alleged that, prior to its re-structuring, the Heilongjiang Jixi Mining Group had not discussed or passed the resettlement policy at a workers’ representatives meeting, as required by the law. Thousands of them were laid off without having received their full compensation. The mine management only gave them 20% of the resettlement fund it received from the central government for the purpose, while 80% of the fund together with the remaining capital and property of the mine went to the mine management, which included the leadership of the mine, the local mining bureau and other government officials. The Didao Mine, which continues to produce substantial output, has become a private mine belonging to those same officials. The workers demanded that the State Council preside over the liquidation of the mine and ensure that the workers be compensated fairly.

The workers’ demands not only went unheeded, the workers themselves also suffered harassment for their collective effort. On May 24, 2008, Yuan Xianchen (袁显臣), a rights activist who had been acting as a legal advisor to the Didao mine workers and who had publicized their plight, was apprehended by the authorities. On March 4, 2009, Yuan was convicted of “inciting subversion of state power” and sentenced to four years in prison and five years’ deprivation of political rights. Between Yuan's apprehension in Beijing and his formal detention on May 29, he was repeatedly tortured to extract confession in Beijing Municipal State Security Bureau Detention Center.

After repeatedly being repressed by officials, the mine workers have abandoned their collective effort to seek appropriate compensation.

One example of workers lacking autonomous unions- taxi strikes in 2008

Conflicts between workers and their employers sometimes explode into “mass labor incidents” (劳工群体性事件), such as strikes, protests and factory sit-ins. The absence of independent labor unions partly explains the high frequency with which these incidents occur despite the authorities’ persecution of leading organizers under the pretense that these incidents “damage social order”, that they are “illegal gathering of crowds to create trouble” and even “incitement to subversion of state power”.

At times, workers manage to force the authorities to make modest concessions through these collective actions. The series of taxi strikes which broke out in China last year was a good example. On November 3, 2008, 8,000 taxis in Chongqing went on strike; a week later, on November 10, 160 taxis in Yongdeng County, Gansu Province, and nearly 100 taxis in Sanya City, Hainan Province also went on strike. The drivers were unhappy that

taxi companies were able to monopolize the taxi rental market for years with little government oversight, resulting in exorbitant fees for drivers. Some drivers reported that, while the local government sells a 25-year taxi license at 50,000 RMB, the company rents the vehicle to the drivers at 300,000 RMB for five years, resulting in a 3000% profit. The continued protests and negotiations between taxi drivers and local authorities have paid off in Chongqing, where the rent was lowered and the rental market disciplined by the local government. In Sanya City, the chief, assistant chief and Party secretary of its Transportation Bureau resigned from their positions following the strikes.

At the centre of the strikes is the current government-controlled system of taxi management, which places an undue burden on drivers as successive layers of businessmen and officials seek to make as much money as possible from their labor. Though drivers in Chongqing and Sanya City were able to win partial victories, there have been no fundamental changes to this system, and taxi drivers continue to stage strikes across the country. In 2009, CHRD documented at least four taxi strikes in four different provinces, involving 5,000 drivers in Xining City, Qinghai Province¹⁴, 350 drivers in Qianjiang City, Hubei Province¹⁵, 1,000 drivers in Yueyang City, Hunan Province¹⁶ and 50 drivers in Poyang County, Jiangxi Province¹⁷.

Following the work stoppages, commentators pointed out that because the drivers lack their own unions to represent their interests and to negotiate with the companies and the government, resentment and grievances built up until they finally led to the strikes.¹⁸ Even the ACFTU acknowledges that taxi drivers currently lack legitimate means to air and handle their grievances. Taxi drivers could join the local official unions (which may or may not be exclusively for taxi drivers), but their rate of enrollment remains low. After the strikes, the ACFTU ordered its local branches to encourage taxi drivers to establish their own unions.¹⁹ These unions are to be under the leadership of the local union for transport workers, which is in turn under the leadership of the local ACFTU branch.

However, the low rate of unionization among taxi drivers does not mean that taxi drivers are uninterested in forming unions. A taxi driver representative pointed out that, in some taxi companies in Chongqing, there were official unions for drivers. However, the employers were often the chairmen of these unions, so few taxi drivers were saw any reason to join.²⁰ Although the new Methods for the Selection of Enterprise Union Chairmen, effective since July 25, 2008, stipulates that employers cannot chair a union of their employees, the same regulations also stipulate that in the selection of chairmen, a union at a higher level holds the ultimate decision-making power. Although the strikes forced the government to take note of the plight of taxi drivers, officials continue to ignore the fact that drivers do not just need a union, but they need an *independent* union with its leadership freely chosen by its members. In 2005, taxi drivers in Chongqing tried to establish an independent union, but the application was rejected because it “failed to fulfill the necessary conditions”.²¹

The Chongqing drivers should probably consider themselves fortunate, as efforts to organize unions can result in consequences much worse than a simple rejection. In May 2008, a representative of dismissed workers of Jilin Oilfields in Songyuan City, Jilin

Province, Chen Yuping (陈玉平), was sent to a Reform through Labor camp for 18 months for "inciting and creating trouble" and "disturbing social order". Chen and other representatives had been preparing to apply to establish an independent union for the dismissed workers. Before Chen's apprehension, he and his fellow organizers were summoned and warned not to establish the union by National Security police from the Songyuan City PSB. Around the time Chen was arrested, two other representatives were administratively detained for ten days for "accepting interviews with foreign media".

Section V: Political Associations

Political association is the most restricted form of association in China. Political power is totally monopolized by the CCP and no other independent political parties exist. Officially, China has eight other political parties in addition to the CCP.²² In practice, however, these parties are subsumed under the CCP and do not exist as political parties independently from the Party. Whenever citizens attempt to establish political parties in opposition to, or independent from, the CCP, the authorities have consistently reacted swiftly and harshly, often sentencing the organizers of these nascent parties to lengthy prison terms. Because of this oppressive policy towards political parties, there have been very few serious attempts to establish new parties since the CCP came into power in 1949. Those that dared, such as Liberty Democracy Party of China (中国自由民主党), founded in 1989; China Republican Party (中国共和党), founded in 1991; China Democracy Party (中国民主党), founded in 1998; and China Ximin Party (中国新民党), founded in 2007, were harshly crushed without exception and their organizers sentenced to imprisonment. Individuals who form small discussion groups to debate China's political reforms are treated as major threats by the Chinese government, which sometimes reacts harshly towards them as well.

The legal status of political associations is unclear in China. There is no specific law or regulation governing them and the three regulations governing organizations, discussed above, never mention or explicitly prohibit organizations of political nature. Since it is widely understood that political association is off-limits, there has only been one attempt to formally register an independent political party in the history of the PRC. Organizers of the China Democracy Party (CDP) never heard back from the MCA about their application to register CDP as a social organization; however, many of them were imprisoned, detained or otherwise severely punished.

Immediately after the CPD's attempt to register and the authorities' subsequent crackdown, the Regulations for Organizations were amended and the current version was promulgated on September 25, 1998. The Regulations now state that a social organization "must not oppose the basic principles of the constitution" (Article 4). The preamble of the Constitution, which outlines its basic principles, states that "Chinese people of all nationalities" are "under the leadership of the Communist Party of China". This amendment reiterates the relationship between the right to freedom of association, proclaimed in Article 35, and the CCP's monopoly of power, declared in the preamble of the Constitution—that citizens are only allowed to associate with each other if the association is not perceived as challenging the CCP's position as China's sole leading

party. Therefore, in a subtle way, it appears that this amendment closes the loophole previously available to those who aspired to form political associations.

New Youth Society

On May 20, 2000, “New Youth Society” (新青年学会) was founded by five young people, Xu Wei (徐伟), Jin Haike (靳海科), Zhang Honghai (张宏海), Zhang Yanhua (张燕华) and Fan Erjun (范二军) as a forum to discuss China’s political reform. Three months later, Yang Zili (杨子立), Huang Haixia (黄海霞) and Li Yuzhou (李宇宙) joined the group. The group dissolved near the end of 2000 as members of the group, who were either university students or recent graduates, became too busy.

To the surprise of the members of the New Youth Group, on March 13, 2001, policemen from the Ministry of State Security took them into custody. They were subjected to repeated and lengthy interrogations, some lasting for over 10 hours. After their release, Zhang Yanhua, Huang, and Fan publicly disclosed that they were threatened during the interrogations and their statements, which accused the New Youth Society of being an “anti-CCP and anti-socialist” organization, were produced under duress. Li, who was suspected of being an undercover agent of the Ministry of State Security, was taken away from Beijing and persuaded to sign a statement calling the New Youth Society an “illegal organization” that aimed to “overthrow the CCP”. Li later fled China and released a public letter stating that his statement was untrue.

On September 18, 2001, Beijing No.1 Intermediate People’s Court convened to try the members of the New Youth Group. The “evidence” presented by the Procuratorate consisted of statements by Zhang Yanhua, Huang, Fan and Li. By that time, the four had either told the court or declared publicly that statements they had produced during police interrogations were untrue. The lawyer for the defendants, well-known legal scholar Zhang Sizhi (张思之), also argued that the group was not an official organization as it had no formal constitution and met only five times. Moreover, Zhang argued that members of the group simply met and exchanged ideas. There was no evidence to suggest that they engaged in any activity that could have endangered state security.

Nonetheless, on May 28, 2003, Xu and Jin were sentenced to ten years of imprisonment while Yang and Zhang Honghai received eight year sentences. Yang and Zhang were released on March 12, 2008, after serving their full sentences.

The example of the New Youth Society sends a chilling signal to all Chinese citizens—that no matter how innocent one’s intentions might be, associating with others on the basis of interest in political change could potentially arouse the attention of the authorities and lead to devastating consequences.

Pan-Blue Alliance of Chinese Nationalists

The Pan-Blue Alliance of Chinese Nationalists (中国泛蓝联盟) was founded in 2004 as a virtual political forum. The online group’s website, now blocked in China, claims to

recognize the Chinese Nationalist Party and “oppose the tyranny of communism, propagate the Three Principles of the People (三民主义) and, together with members of the Chinese Nationalist Party, promote the cause of peaceful reunification of China”. The government has referred to the Pan-Blue Alliance as an “unregistered illegal organization” ever since the forum was founded. Members



Picture 3: Members of Pan-Blue Alliance

of the Pan-Blue Alliance have been subjected to constant surveillance, and they have been beaten, detained and imprisoned by the police. The table below lists some of the recent cases, suggesting that the persecution is well-coordinated and targeted at members of the Pan-Blue Alliance across the country.

Name of Pan-Blue Alliance members	Location of residence	Description of persecution in recent years
Cai Aimin (蔡爱民)	Zhengzhou City, Henan Province	Cai was detained for 16 days by Zhengzhou police on May 26, 2007. He was subsequently sent to Re-education through Labor for 21 months for “disturbing social order”. Upon his release, Cai continued his activism. On May 24, Cai was seized in Beijing, where he had been petitioning about corruption and forced appropriation of farmland, and forcibly returned to Zhengzhou.
Hu Jing (胡敬)	Chongqing Municipality	Hu has been confined to a psychiatric hospital three times. Most recently, he was sent to a local psychiatric institution between early July and September 19, 2008 to prevent him from petitioning during the Olympics.
Huang Xiaomin (黄晓敏)	Chengdu City, Sichuan Province	Huang has been taken into custody on March 1, 2008, and since then formally arrested for “disturbing social order”.
Li Zhuoxi (李卓熹)	Changsha, Hunan Province	On June 3, 2008, Li was detained on suspicion of "internet fraud" by police from Dazhou PSB in Sichuan. In July, he was released from detention and put under residential surveillance. After the end of the Paralympics in September, Li was released from residential surveillance.
Sun Buer (孙不二, real name Wen Yan)	Wuhan City, Hubei	Sun was taken away by police from his home at the end of May 2007 and he has not been seen

[文炎]	Province	since.
Wei Zhenling (魏桢凌)	Hangzhou City, Zhejiang Province	CHRD learned on August 26, 2008, that Wei was sent to 21 months of RTL for "gambling and solicitation of prostitutes".
Xie Fulin (谢福林)	Changsha City, Hunan Province	Xie was taken away from his home on June 1 2009 by National Security police. Xie was not released until after the end of the anniversary of the 20 th Anniversary of Tiananmen Massacre on June 4. Xie has been detained again since July 22 2009 on suspicion of "stealing".
Xiong Jiahu (熊家湖)	Chongqing Municipality	On June 26, 2007, Xiong was sent to two years of RTL by the local police for "soliciting prostitutes".
Zhang Qi (张起)	Chongqing Municipality	Zhang was sentenced on July 7, 2009, to four years of imprisonment for "inciting subversion of state power".
Zhang Zilin (张子霖)	Hunan Province	Zhang was sentenced on February 21, 2008 to two years of imprisonment for "fraud and extortion". During his imprisonment, he was repeatedly beaten and forced to perform heavy labor for over thirteen hours a day. Zhang was released in June 2009 after serving his term.

China Democracy Party

On June 25, 1998, Zhejiang residents Wang Youcai (王有才), Wang Donghai (王东海) and Lin Hui (林辉) submitted an application to register a social organization with the Zhejiang Provincial Office of Civil Affairs. The application included the "Declaration of China Democracy Party", which stated that the aims of the applicant organization were to "realize direct democratic elections", establish "a constitutional democratic political system", "nationalize the military" and "totally eradicate...political dictatorship". This marked the first time an opposition party had tried to formally register with the government since the CCP came into power in 1949. After the Zhejiang branch submitted its application, individuals in ten municipalities and provinces applied to register the CDP with their local civil affairs bureaus.

Officials responded almost immediately. On July 10, 1998, Wang Youcai and eight other CDP organizers were taken into police custody across the country. On December 17, Qin Yongmin (秦永敏), from Hubei Province, was convicted of "subversion of state power" and sentenced to 12 years of imprisonment. Within the same week, Wang Youcai and Xu Wenli (徐文立), from Beijing, were convicted of the same charge and sentenced to 11 and 13 years of imprisonment, respectively. Dozens of CDP organizers were reportedly subjected to political persecution by the authorities. Xu was released in December 2002, and Wang in March 2004, reportedly following international pressure. The two were forced into exile afterwards. Qin continues to languish in prison.

The persecution of members of CDP continues today. In late June 2008, Xie Changfa (谢长发), a CDP member from Changsha City, Hunan Province, was taken into detention by National Security police from the Changsha PSB. Xie was tried for “subversion of state power” on April 28, 2009, by Changsha City Intermediate Court. The Procurator alleged that Xie engaged in subversive activities because he participated in organizing the CDP in 1998, that he has been “working as a CDP member for a long time”, and that he is preparing and “connecting with others across the country” to organize the first congress of the CDP. Xie’s lawyer argued that Xie is merely exercising his freedoms of association and expression, rights protected by the Chinese Constitution. The court has yet to announce its verdict.

Other members of the CDP have also been harassed, subjected to residential surveillance and otherwise persecuted in recent years. On March 14, Hu Junxiong (胡俊雄), an internet engineer, was forcibly sent back from Beijing, where he worked, to his hometown in Huanggang City, Hubei Province. Police from the PSB and the Ministry of State Security have persisted in harassing Huang even though he ceased his involvement with the CDP since helping to found it in 1998.²³ Deng Yongliang (邓永亮), an internet writer, was forcibly sent back from Shanghai, where he was seeking employment, to his previous residence in Xian, Shaanxi Province, on February 7. The Shanghai police told Deng that as an “important member” of the CDP, he was not allowed to stay in Shanghai.

During important national events, CDP members are often detained and interrogated. In the lead-up to the Olympics on April 18, 2008, Tao Jun (陶君), based in Guangzhou City, Guangdong Province, was interrogated for hours about the CDP and the Olympics²⁴. Between July and October 2008, Lu Honglai (吕洪来), from Tianjian, was secretly detained for nearly three months²⁵. In the aftermath of the Sichuan earthquake, members of the CDP Zhejiang branch, such as Qi Huimin (戚惠民), were summoned and warned against meeting each other to discuss the relief effort.²⁶

CDP members who have been released after serving years in prisons are still subjected to deprivation of political rights, and are frequently interrogated and threatened. For example, on April 2, 2009, Gao Hongming (高洪明), a CDP member in Beijing released from prison in June 2007, was summoned and had his home searched by the police for accepting interviews with foreign media and for publishing articles.²⁷ On March 23, 2009, Cha Jianguo (查建国), another CDP member from Beijing, had his home searched and was interrogated for 12 hours about signing *Charter 08* and meeting with foreign media, “political” activities in which he was forbidden to take part.²⁸

China Ximin Party

In early December 2007, Guo Quan (郭泉), a professor at Nanjing Normal University, released a public letter calling for political reforms. In the letter Guo called on the China Democratic League, of which he is a member, and the seven other parties that officially have “political consultation” status to become opposition parties. On December 6, Guo

was barred from teaching and demoted to a position working in the university's library. Then, on December 14, CDL Nanjing Normal University Branch expelled Guo due to "great political pressure". On December 17, Guo formally announced that he would organize China Ximin Party (CXP).

Although CXP had only a few members at its inception, the authorities nonetheless reacted nervously to it. In the aftermath of the Sichuan earthquake in May 2008, Guo was subjected to ten days of administrative detention in Nanjing. Prior to his detention, Guo held a meeting with members of the CXP to discuss the CXP's response to the disaster. Guo alleged that the police detained him after he refused to provide them with a list of CXP members during the interrogations.²⁹ On November 13, 2008, Guo was taken into police custody and detained on suspicion of "subverting state power". According to Guo's lawyer, Guo has been interrogated thirty-three times, focusing on areas such as the CXP and the promotion of a multi-party system. Guo remains in custody and has not yet been tried.³⁰

To maintain the CCP's one-party monopoly, the Chinese government has reacted to individuals' attempts to organize politically with swift and harsh punishment in defiance of international and domestic condemnation and pressure. Its actions send an unequivocal message to citizens that they should avoid political associations at all cost.

Section VI: Informal Associations of Individuals

In addition to placing restrictions on efforts by citizens to formally organize, whether in organizations, unions or political parties, the Chinese government also nervously watches the spontaneous initiatives of individuals to associate.

Publishing open letters which address the government on political or social issues has always been a popular means by which concerned Chinese citizens jointly express their opinions and attempt to influence policy decisions. However, when such public letters comment on sensitive political issues, or when they are joined by a large number of individuals, the Chinese government usually reacts negatively, seizing the organizers and punishing those who signed the letter.

For example, on February 19, 2009, Yang Chunlin (杨春林), a worker and activist from Jiamusi City, Heilongjiang Province, was convicted of "inciting subversion of state power" and sentenced to five years' imprisonment and two years' deprivation of political rights. Yang was punished for collecting signatures to endorse the open letter, "We Want Human Rights, not the Olympics". The letter was reportedly signed by more than 10,000 people, mostly Heilongjiang farmers who had been fighting forced eviction and were sympathetic with other victims of land loss in cities where officials had used the Olympics as a pretense to grab land or housing without adequate compensation. Following Yang's arrest, two village representatives from Heilongjiang, Yu Changwu (于长武) and Wang Guilin (王桂林), were sent to RTL for helping Yang collect signatures. "Barefoot lawyer" Yuan Xianchen (袁显臣), also from Heilongjiang, was also imprisoned for helping Yang.³¹

One of the best-known public letter initiatives in recent years, *Charter 08*, similarly met official hostility. The *Charter*, which calls for bold reforms that promote democracy and human rights in China, was released on December 9, 2008. It was initially signed by 303 Chinese, but the signatories swelled to over 8,000 by the time of writing. A day prior to the release of *Charter 08*, Liu Xiaobo (刘晓波), a Beijing-based writer and intellectual, was taken into police custody for his role in drafting the document. Liu was subjected to “residential surveillance” in an unknown location until he was formally arrested for “inciting subversion of state power” on June 23, 2009. Moreover, over a hundred signatories across the country have been interrogated, threatened, or had their homes searched and property confiscated by the authorities in connection with *Charter 08*.

The government is especially suspicious of spontaneous initiatives by activists and dissidents and it often tries to stop these efforts even when they involve providing assistance to fellow Chinese citizens. After the protests and riots in the Tibetan areas in March 2008, twenty-one lawyers extended an offer to provide legal aid to the arrested Tibetans in a letter made public on April 2, 2008. As a result, they were summoned for questioning, made to admit wrongdoings, told to dissociate from the initiative, and threatened with punishment by the authorities. In the end, one lawyer who participated in the initiative, Teng Biao (滕彪), lost his lawyer’s license after the Beijing judicial authorities refused to renew it following the annual evaluation of lawyers’ performances.

Between September and November 2008, an initiative by a group of human rights lawyers to provide legal aid to parents of children who became ill after ingesting tainted milk products met similar end. The initiative, which attracted the participation of 107 lawyers in 23 provinces and municipalities by October 7, gradually dissolved after the lawyers were pressured by the local judicial authorities. And after the Sichuan earthquake in May 2008, groups of concerned citizens in Hubei and Hunan Provinces, mostly activists and petitioners, were prevented from collecting money and making donations to the victims. Niubo Web (牛博网), an online activist community, had its bank account frozen by the authorities and its members summoned and interrogated for collecting donations.³²

Section VII: Striving for autonomy in established organizations

As more associations and groups are founded in China, and as some strive for greater autonomy from the state, they change citizens’ expectations about organizations. Some progressive members within GONGOs have realized that these organizations are more concerned with representing the government’s position rather than serving the needs of their constituencies. Accompanying this realization is a courageous push towards greater autonomy and self-governance within these established organizations, a dramatic example of which was the quest by a group of Beijing lawyers for direct elections of the leadership of the Beijing Lawyers Association (BLA).

On August 26, 2008, 35 lawyers, including Cheng Hai (程海), Zhang Lihui (张立辉) and others, released a public letter which urged the BLA, whose leaders are currently hand-

picked by the municipal judicial authorities in pseudo-elections, to implement direct elections by the end of 2008.³³ According to the signatories, at least 90% of Beijing's lawyers have not participated in these pseudo-elections.

The BLA is the official lawyers association under the All-China Federation of Lawyers (ACFL). The Statutes of the ACFL³⁴ and the Lawyers Law³⁵ establish a hierarchical and centralized management framework for lawyers associations, similar to that of trade unions. Chapter five of the Lawyers Law states that there should be one national lawyers association—the ACFL—and under it local lawyers associations. The local lawyers associations may draft their own constitutions, but the constitutions must not violate the Statutes of the ACFL. Article 4 of the Statutes of the ACFL states that a lawyers association at a lower level accepts the supervision of that at a higher level, and the lawyers association at the highest level—the ACFL—in turn accepts the supervision of the judicial administrative department. In sum, lawyers associations are in practice extensions of the judicial authorities, established to manage lawyers in China, even though both the Lawyers Law and the Statutes of the ACFL claim that they are “are voluntarily formed by lawyers to realize the common aspirations of its members”.

For lawyers, there is no escape from the official lawyers associations, as membership is required in order to obtain valid licenses to practice law. Lawyers associations also hold the power to pass or fail lawyers in their annual evaluation of their performances. If the associations fail the lawyers, their licenses are not renewed and they are barred from practicing law. The 35 lawyers who signed the public letter argue that, contrary to the stipulations in the Lawyers Law, lawyers associations are not voluntarily formed by lawyers and they fail to represent their rights and interests.

The lawyers' request did not receive a kind response. On September 5, 2008, BLA released a statement which read,

“any individual who uses SMS messages and the internet to link up and associate in private, using the pretext of promoting democratic elections, to publish inflammatory speech, to spread rumors to confuse people's minds, to attempt to cozy up to lawyers who do not know the truth to support the so-called ‘direct election of Beijing Lawyers' Association’ is illegal. They want to make use of the opportunity...to reject the current lawyer management system, the judicial system and even political system that exists in our country.”³⁶

The Chaoyang District Bureau of Justice in Beijing, whose jurisdiction included law firms which employed 19 of the 35 signatories, called on the heads of those firms to demand that lawyers explain the motives behind their endorsement of the petition. Under pressure from officials, Cheng, Zhang, and other lawyers who signed the petition were explicitly asked by their work units to leave. Yang Xuelin (杨学林), another signatory, was “personally received” by officials at the Xicheng District Bureau of Justice in Beijing.³⁷ Around the same time, some lawyers who participated in the initiative complained that their phones were tapped and they were closely monitored and followed.

However, the lawyers did not immediately succumb to the pressure. On January 12, lawyer Yang Huiwen (杨慧文) publicly declared that he was going to run for chairman of the BLA. During the BLA Film Festival between January 13 and 18, the 35 Beijing lawyers distributed leaflets about direct elections for the leadership of the association. Yang also handed out leaflets which described his election pledges.³⁸

The Beijing judicial authorities again retaliated against the lawyers and their firms. On February 17, Beijing's Yitong Law Firm (北京忆通律师事务所) was notified that it would be forced to close for six months for "re-organization" by the Beijing Haidian District Bureau of Justice. It is believed that Yitong Law Firm was punished for its lawyers' advocacy for direct elections.³⁹ The lawyers went ahead and ran for office. However, they were repeatedly taken off the list of candidates: Cheng and Zhang were not on the list of candidates for Chaoyang District even though they met all the requirements for candidacy. In the first round of voting for BLA, though the lawyers advocating for direct election were not listed on the ballot, other lawyers supporting them wrote their names in the field for "other candidates". Cheng, Zhang, Yang Huiwen, Tang Jitian (唐吉田) and Tong Chaoping (童朝平) obtained the required number of votes to be eligible for candidacy in the second round of voting. However, the five were surprised to find that their names were missing from the ballot during the second round on March 4. According to Yang, police officers were on hand to observe the voting.⁴⁰

Finally, on May 31, the deadline for the annual review and renewal of lawyers' licenses, at least twenty lawyers found their licenses were not renewed by the judicial authorities.⁴¹ Over half of them were lawyers who led or participated in the initiative calling for direct elections for the BLA. At the time of writing, five lawyers, Jiang Tianyong (江天勇), Li Xiongbing (黎雄兵), Li Heping (李和平), Li Chunfu (李春富) and Wang Yajun (王雅军), have had their licenses formally revoked according to an official announcement.⁴² Other lawyers are still waiting for official notification, but in the meanwhile, without a renewal of their licenses, they cannot practice as lawyers. This brings the lawyers' demands for greater autonomy within their professional association to an unfortunate end, with those most active in the initiative paying a high price. The case of the Beijing lawyers offers little hope for members of other GONGOs inclined to seek greater autonomy for their organizations.

Recommendations

To better live up to its responsibility to protect the right to freedom of association, CHRD calls on the Chinese government to:

- Immediately ratify the ICCPR so that protection of the right to freedom of association and other interrelated civil and political rights will be written into domestic law;
- Immediately remove its reservation on Article 8.1(a) of the ICESCR;
- Conduct a constitutional review by the NPC of the Regulations for Registration and Management of Social Organizations, Provisional Regulations for the Registration and Management of Citizen-Managed Non-enterprise Units and

Temporary Measures Banning Illegal Popular Organizations. Amend the regulations to:

- remove the requirement that an organization has to be associated with a governmental sponsoring office in order to register with the MCA;
 - lower the membership and funding requirements for registration with the MCA; and
 - limit the definition of illegal organizations to those which the government can clearly demonstrate to have committed acts, or about to commit acts which threaten “national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”, in accordance with Article 8.2 of the ICCPR. Such definition must be narrow, allowing the authorities to deny the right to associate only in exceptional circumstances. The definition of “illegal organization” must explicitly exclude any non-violent activity in the exercise of the freedom of association, including organizing independent political parties and workers unions.
- The NPC should draft an “Association Law” which codifies the principle of freedom of association as well as the measures to be taken against its infringement.
 - Conduct a constitutional review by the NPC of the PRC Trade Union Law. Abolish the hierarchical and centralized system of trade unions by abolishing the stipulation that a union is led by the one at a higher level. The Trade Union Law should be amended so that it protects an individual’s right to form and join independent trade unions and so that such unions have the right to elect their own representatives, draw up their own rules and choose whether or not to associate with other trade unions.
 - The NPCSC must act to interpret Article 105 to clarify and precisely define the meaning of the terms “incitement”, “subversion” and “state power,” as well as the specific conditions under which an act of association may constitute “inciting subversion of state power” or “subversion of state power.”
 - Conduct a constitutional review by the NPC of the Lawyers Law. Abolish the hierarchical and centralized system of lawyers associations by revising the provisions in Chapter five of the Lawyers Law. The Lawyers Law must make clear the independence and legitimacy of lawyers associations as self-governing professional organizations.
 - Immediately cease persecution of individuals and release those imprisoned for peacefully exercising their right to freedom of association.

¹ Ministry of Civil Affairs, “2008 Civil Affairs Development Statistics Announcement <2008 年民政事业发展统计公报>”, February 4, 2009, http://cn.chinagate.cn/reports/2009-02/04/content_17224537.htm; Ministry of Civil Affairs, “2007 Civil Affairs Development Statistics Report <2007 年民政事业发展统计报告>”, <http://www.chinanpo.gov.cn/web/showBulletin.do?id=30672&dictionid=2201&catid=>

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³ This number includes both social organizations as well as non-enterprise work units. See below for a definition of these two types of organizations.

⁴ For example, Yu Keping (俞可平), a Beijing scholar, estimates that there are about 3 million social organizations in China. See “A Heated Debate between Beijing University and Tsinghua University: Has China Moved into a Civil Society? <北大清华激辩：中国迈进公民社会？>”, January 7, 2009, <http://www.chinaelections.org/NewsInfo.asp?NewsID=141318>

⁵ Wang Ming (王名) in Zhao Lingmin (赵灵敏), “Giving NGOs Calcium Supplements <给 NGO “补钙”>”, February 23, 2007, http://blog.sina.com.cn/s/blog_4b2b30070100092m.html

⁶ This “Regulations for Registration and Management of Social Organizations”, promulgated in 1989, in turn replaced an earlier administrative regulations on social organizations, “Provisional Methods for the Registration and Management of Social Organizations (社会团体登记暂行办法)”. The Provisional Methods was issued on October 19, 1950 soon after the CCP came into power. It essentially dissolved the vast majority of the social organizations at the time and made most of them illegal.

⁷ Article 2, Regulations for Organizations

⁸ Article 2, Regulations for Non-Enterprise Units

⁹ Xinhua, “China sets plan to increase income of urban, rural residents by 2010”, April 13, 2009, <http://english.peopledaily.com.cn/90001/90776/90785/6635555.html>

¹⁰ See Article 3 of the Regulations for Organizations

¹¹ Aizhixing, “A Forum on the Registration of and Tax Payment for Non-government Organizations; Call for Strengthened Contact between NGOs <非政府组织注册和纳税问题研讨会召开，呼吁加强非政府组织之间的联系>”, September 20, 2009, http://www.crd-net.org/Article/Class53/200809/20080920075738_10617.html

¹² Xinhuanet.com, “Let us look at the True Colors of the U.S. National Endowment for Democracy <且看美国国家民主基金会的真面目>”, October 6, 2008, http://news.xinhuanet.com/comments/2008-10/06/content_10156929.htm; Huanqiu.com, “the U.S. National Endowment for Democracy Muddles the World <美国国家民主基金会搅和世界>”, October 6, 2008, <http://news.xhby.net/system/2008/10/06/010349472.shtml>

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¹⁴ “Five Thousand Xining Taxi Drivers Strike; Protest New Guidelines on Government-Related Managerial Authority Time Limit (西宁 5 千名出租车司机罢运 抗议政府有关经营权期限的新规定)”, June 15, 2009, http://www.crd-net.org/Article/Class53/200906/20090615224041_15861.html

¹⁵ “Qianjiang Taxi Drivers Again Go on Strike, Shut Down Transit (潜江市出租车司机再次罢工、罢运)”, June 19, 2009, http://www.crd-net.org/Article/Class53/200906/20090619163543_15912.html

¹⁶ “Systematic Corruption at Heart of Repeated Taxi Drivers’ Collective Strikes (出租车群体性罢工事件频仍 根本问题在于制度性腐败)”, April 15, 2009. http://www.crd-net.org/Article/Class53/200904/20090415132904_14940.html

¹⁷ “Poyang County, Jiangxi Province Taxi Drivers’ Collective Drive to Provincial Capital to Protest (江西省鄱阳县的士司机集体开车进省城抗议)”, May 13, 2009, http://crd-net.org/Article/Class71/200905/20090513133436_15383.html

¹⁸ See for example, Zheng Qianfan (张千帆), “Guangzhou Taxi Drivers’ Gathering Stirred up Storm; Over a Hundred Damaged Vehicles at Various Sections of the Road <广州的哥聚集事件又起风波 上百人多路段频砸车>” Tao Duanfang “Chongqing taxi strike: every occupation needs channels to ease pressure <重庆计程车罢运事件：各行業都需疏導壓力渠道>”, November 13, 2008, *International Herald Tribune*, available at <http://www.cns.hk:89/gn/news/2008/11-13/1448196.shtml>

¹⁹ China.com.cn, “ACFTU: Focuses on Promoting Collective Bargaining on Taxi License Fees <全國總工會稱將重點推動計程車份錢集體協商制>”, November 15, 2008, http://big5.china.com.cn/news/txt/2008-11/15/content_16769993.htm

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