

REINING IN CIVIL SOCIETY

THE CHINESE GOVERNMENT'S USE OF LAWS & REGULATIONS TO PERSECUTE FREEDOM OF ASSOCIATION

Chinese Human Rights Defenders

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While the Chinese government talks about moving towards “greater rule of law,” it uses a range of imprecise laws, regulations and tax codes to persecute individuals who organize outside of its control. Apart from suppressing individuals and organizations, a purpose of the measures taken by the government is to intimidate others to dissuade them from organizing. Any independent organization perceived as a threat to government power risks official retaliation. This inhibits the growth of non-governmental organizations and, more generally, civil society. Rather than promoting the rule of law, government actions undermine it and emphasize that the CCP is above the law and regards the legal system primarily as a means of ensuring control over the people.

Two principal mechanisms are used to restrict freedom of association: stringent administrative regulations that make it difficult for organizations to legally register and expose them to the risk of being labeled “illegal,” at which point, an array of law enforcement measures are brought to bear 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 which are impossible to fulfill unless the organizers are well connected to the authorities. Ordinary citizens, especially critics of the government, are rarely able to obtain this approval. Without registration with the MCA, these organizations would be considered “illegal” and, in consequence, be open to official harassment. Unable to register with the MCA, many organizers have no option but to register with the State Administration of Industry and Commerce (SAIC) as a for-profit legal entity.

A case in point is the recent persecution of Open Constitution Initiative (or Gongmeng [公盟]), a Beijing legal aid center to registered with the SAIC. On July 14, 2009, Gongmeng received notification from the tax authorities that they were to be fined RMB 1.42 million for “tax evasion.” Three days later, the Beijing Municipal Bureau of Civil Affairs raided its office, declared the organization “illegal” and formally banned it. On July 29, Gongmeng’s director **Xu Zhiyong** (许志永) and another staff member disappeared. It is believed they were criminally detained on suspicion of “tax evasion.” In the past year, Gongmeng rose to prominence due to its involvement in investigating “sensitive” cases, such as the Sanlu Milk Scandal and the suppression of protests in the Tibetan areas in March 2008. Acting in the name of “law enforcement,” various government agencies coordinated to clamp down on the outspoken organization.

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 that have to register as for-profit companies are at a disadvantage compared to officially-backed groups 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. China’s Trade Union Law states that the All-China Federation of Trade Unions (ACFTU), a government-affiliated organization, is the only union allowed; those who attempt to form independent unions are either ignored or have their applications denied and their organizers detained. The right of official union members to choose their leaders is heavily curtailed: decisions are made by leadership, which is controlled by the CCP. The outcome of the restrictions of the Trade Union Law is that in disputes with employers the official unions fail to represent workers and their interests, who are then forced to resort to alternative forms of association, such as collective petitioning, choosing representatives to negotiate with employers and going on strike, which result in their actions being labeled “illegal” and their organizers punished.

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

Besides maintaining tight control over formal associations, the government also treats spontaneous, informal initiatives to organize with heightened suspicion. When citizens have banded together to aid those in distress, as happened following the Sichuan Earthquake in May 2008, or when they have signed open letters expressing discontent with officials and made policy suggestions, the government has taken the organizers into police custody and intimidated participants in the initiatives.

Despite official obstacles and the potential for punishment, many citizens have continued to exercise their right to freely associate. Even within organizations closely affiliated to the government, there are individuals who press for greater freedom from state control. One recent example is the work by lawyers to press for direct elections to choose the leaders of the Beijing Lawyers Association. Not unexpectedly, they suffered official retribution: in May

2009 the lawyers who led the effort lost their licenses to practice law. Significantly, in this act and in the closure of Gongmeng it was lawyers and those who provide legal aid who were targeted by the authorities, a clear attack on the rule of law by the government.

This report offers a number of recommendations to address the issues referred to above. Since many of the attacks on citizens' right to freedom of association originate in a legal and regulatory framework designed to violate this right, the recommendations focus on change in this area. They call for:

- A constitutional review of the relevant laws and regulations;
- The drafting of an Association Law to protect freedom of association;
- The ratification of the ICCPR;
- The removal of the government's reservation to Article 8.1(a) of the ICESCR which guarantees the right to form independent unions;
- The interpretation of Article 105 of the Criminal Law to specify the conditions under which an act of association may constitute "inciting subversion of state power" or "subversion of state power"; and
- An end to the persecution of individuals for peacefully exercising their right to freedom of association and the release of those imprisoned for exercising this right.



I. Administrative regulations governing organizations

According to data published by the Ministry of Civil Affairs, the total number of organizations existing countrywide has steadily increased over the last eight years, although compared to the beginning of the decade the growth rate has leveled off in recent years (see Table 1). Over the five years for which data is available, by the end of 2008 the number of foundations has also increased, to 1,390.¹

Table 1: Total number of organizations (social organizations and non-enterprise units) and foundations in China, 2000 – 2008; data from the Ministry of Civil Affairs

YEAR	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total no. of organizations ² (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 seriously underestimate the real number of organizations in China.³ One scholar estimates that, because of the numerous barriers the government places in the way of forming and maintaining organizations, only 10% of the country's organizations are registered.⁴

Despite its status as a human right proclaimed in Article 22 of the 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 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 their right to associate.

There is currently no law governing the act of association in China. During the 13th Party Congress in 1987, the CCP discussed formulating an “Association Law” and asked the MCA to produce a draft. The draft was submitted to the State Council in 1993, yet the NPC, China’s legislature, never put the draft law on its legislative agenda; since then it 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 October 25 of the same year, replacing an earlier version which had been in effect since October 1989.⁵ According to the regulations, “social organizations” (社会组织) refer to “non-profits... organized voluntarily by Chinese citizens to carry out activities that realize the common will of their members in accordance with their charters.”⁶ Registered social organizations usually include groups whose work relates to such areas 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 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). “Mass organizations” such as the All-China Women’s Federation (ACWF, 全国妇女联合会) and the All-China Federation of Trade Unions (ACFTU) are exempted from registration entirely.

The purpose of Regulations for Organizations is clear from its first article, which professes to “...guarantee the freedom of association of citizens” but instead serves to “...strengthen the registration and management of social organizations.” In the 39 articles that follow, the words “freedom” and “freedom of association” are absent, but there are 13 articles listing the activities which organizations are prohibited from engaging in.

According to the Regulations for Organizations, all social organizations must register with, and be approved by, the government (see Section II). The regulations also outline stringent restrictions on modes of operation once the organization is successfully registered. Articles 26, 28 and 31 stipulate that they are subject to an annual review by their sponsoring office as well as the MCA. Article 19 states that, although social organizations may set up affiliated bodies, they are not allowed to establish branches in other areas of the country, e.g. “regional offices.” A registered social organization violating these provisions faces punitive measures: they may receive a warning, have

their activities temporarily suspended, their organization banned or the people responsible for the violation held criminally liable.

Provisional Regulations for Registration & Management of Citizen-Managed Non-Enterprise 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 "groups set up 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."⁷ "Citizen-managed non-enterprise units" (民办非企业单位) and "social organizations" (社会团体) are similar types of organizations; the 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 private or public companies.

Similar to the Regulations for Organizations, the Regulations for Non-Enterprise Units includes 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 penalized when it violates any of the regulations.

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

Temporary Measures Banning Illegal Organizations

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

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

Although similar prohibitions and threats of punishment against "illegal" organizations already existed in two previous regulations promulgated by the State Council two years earlier, the Temporary Measures reiterates them and equips the MCA with an enforcement power to close down these organizations. The timing of this additional regulation may reflect official anxiety in response to widespread social discontent, restlessness and a desire for change in Chinese society. Many progressive individuals have turned to organizations as a viable and relatively safe avenue to push for social reform, generating the momentum for the evolution of what is now recognized as the "rights defense movement" (维权运动).

II. Barriers to registration for organizations

Taken together, the three regulations described above provide the government with a basis for restricting 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 filtering is achieved through 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 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 national or local level, applicants are left to identify potential sponsors on their own.

Ordinary citizens without political connections are unlikely to obtain the approval of these offices; as they 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 tangible benefits to the office. With applicant organizations whose work might be potentially "sensitive," government offices almost always decline the request in order to stay out of trouble with 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 an "Open letter calling for legal assistance from the All-China Lawyers Association"

On December 26, 2004, 58 farmers from Wenling City, Zhejiang Province, upset that local officials allegedly had illegally appropriated and sold farmland to enrich themselves, declared their intention to form a "farmers' union" (农会) to fight for their rights. As a last resort, after having repeatedly complained to higher authorities about the abuses taking place and receiving no response, the farmers established the Farmers' Association.

Within a year of its founding, the Association grew to more than 180 members, and claimed to represent over 800,000 farmers in the area. On March 1, 2006, representatives traveled to the Wenling City Bureau of Civil Affairs to formally register their organization but the Bureau refused their application on the grounds that they lacked a sponsoring office. The farmers then went to all the government offices with administrative or legislative mandates related to farming, such as the Agricultural Bureau and the Rural Development Office, and requested sponsorship for the Association; their application was refused without explanation at each office they visited.

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 to demand that it appoint a sponsor for their Farmers' Association, but the Court refused to hear the case on the grounds that it was "an illegal organization." The farmers also submitted a request for an administrative review to the Taizhou City Bureau of Civil Affairs, but that request was ignored also. On November 23, 2006, the Bureau declared that, in accordance with the Regulations for Organizations and the Temporary Measures Banning Illegal Civic Organizations, the Farmers' Association was officially banned. The farmers continued to press their case: in January 2007 they issued a number of open letters addressed to the central government in which they described their circumstances.

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.

CASE STUDY #2

NO RESPONSE FROM THE MINISTRY OF HEALTH AFTER SIX YEARS OF APPLICATIONS

On numerous occasions from 2000 to 2006, more than a hundred doctors applied to the Health Department for its consent to sponsor a national eye care association. In March 2006, after six years without formal a response from the Department, one of the applicants sued them for failing to respond to their application. The Health Department argued that even though it never issued a written response, it had informed one of the applicants about its decision and also argued that the application did not meet all its requirements and was repeatedly returned to the organizers for additional 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 No.1 Intermediate Court rejected the doctors' lawsuit.

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 set up stringent requirements for registering with the MCA: Article 10 of the Regulations 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.” As the average annual income in 2008 of a rural resident was 4,761 RMB, for a local organization to raise the amount of funding required by the Regulations would be extremely challenging.⁸ Article 10 goes on to state: “More than 50 individual members are required before an organization can be recognized.” This is an extremely demanding requirement as only a small proportion of citizens are willing and able to take part in establishing groups of this size. Article 10 leaves organizations in a Catch-22 situation: they are not allowed to hold any activities before being properly registered, but if they don’t engage in any activities they remain unknown to the local community and are therefore unable to raise the necessary funds and membership for the group’s registration.

Because of the restrictions in the two regulations, organizations that are able to register are usually linked to government officials or are created as an offshoot of a state organ. Though such organizations are allowed to exist, they must operate within the parameters defined for them by their government sponsors, as this support may be withdrawn if the organization acts in any way deemed inappropriate. Organizations successfully registered in accordance with the two regulations cannot technically be referred to as non-government organizations (NGOs), as this implies independence from government control; they are more accurately described as “government-organized NGOs” (GONGOs).

III. Challenges of operating without MCA approval

Unless an organization registers with the MCA, or is exempted from registration by the Regulations for Organizations,⁹ it is considered to be an “illegal organization.” Nevertheless, many groups have chosen to circumvent the regulations and operate without registering with the MCA. These organizations may take different forms: they may be an affiliated organization of a registered social organization and although they perform separate work such organizations have no legal identity independent of the host organization; they are not registered as for-profit companies with the SAIC. Others have no formal existence: they are not registered with MCA or SAIC and are not attached to other organizations.

Such “illegal” organizations face varying degrees of persecution: the more vocal critics of the government, or groups organized by activists and dissidents, are often at risk of harassment and of being closed down.

Subsidiaries of a registered social organization

Though groups affiliated to a registered social organization are able to register with relative ease, once registered they are subject to the same scrutiny as their host organization. To set up an affiliate, the host organization has to submit an application on its behalf to its sponsoring office and obtain its approval, after which MCA approval must be obtained. During the annual review of the host organization, the operation of the affiliated group is also examined. If it chooses, the host organization can withdraw its sponsorship at any time, thus rendering the affiliate

“illegal.” An affiliated organization has no more autonomy than a registered social organization, despite this one degree of removal from.

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 unchanged for over a decade. Even though Friends of Nature now has upwards of 10,000 members, it continues to have no legal identity.



Gongmeng's office after the police search

Organizations registered as for-profit with the SAIC

Unable or unwilling to register with the MCA, organizations register with the SAIC to obtain a kind of legal status which allows them to raise funds and operate with a degree of legal recognition. However, registering with the SAIC has its drawbacks:

- As “for-profit” organizations are subjected to a more rigorous accounting process, this acts as a deterrent to getting involved in projects where they may have to deal with stringent accounting procedures;
- Having to pay numerous kinds of taxes increases operating costs;
- Non-profit organizations registered as “for-profit” are regarded with suspicion by the authorities who oversee these organizations; they are subjected to close scrutiny, making it harder to organize activities, attract members or mobilize resources;
- Regulations governing tax compliance and accounting practices of for-profit organizations give the authorities leverage to penalize such groups for “tax evasion,” as was the case with Gongmeng, the Beijing legal aid center;
- With no official backing, this kind of organization would have no sponsoring office to protect them if the local political climate should change and thus are more prone to be declared “illegal” and shut down; and
- Because of their “for-profit” status, contributions to these groups from foreign funders are usually withheld unless their constitutions are amended to declare the non-profit nature of their work, leaving the organizers even more vulnerable to interference from government agencies.

At a meeting of SAIC-registered organizations 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 by officials from the PSB and the SAIC for possible fraud or evasion of taxes. At the same meeting, a member of Huiling (慧灵), a Beijing NGO working to defend the rights of the handicapped, spoke of their operations being scrutinized by investigators 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 its bank that, since it was registered as a company, it must pay taxes on the funds it received from foreign foundations.¹⁰ 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. On July 29, 2009, Gongmeng’s director **Xu Zhiyong** (许志永) and one staff member, **Zhuang Lu** (庄璐), disappeared, reportedly detained on suspicion of “tax evasion,” though at the time of writing their families have not received any official notification of this.

The plight of unregistered organizations

Unregistered organizations not belonging to the two categories referred to above mostly include informal groups whose constituents meet only occasionally. Some of these groups, which may call themselves “salons” (沙龙), “forums” (论坛), “federations” (联谊会), or “social clubs” (俱乐部), operate mostly in virtual space: because they are not registered with the SAIC or attached to registered organizations, they are even more at risk of being labeled as “illegal” organizations by the authorities.

CASE STUDY #3

AIZHIXING INSTITUTE

Apart from having its accounts repeatedly investigated, Aizhixing Institute has also been subjected to various forms of harassment. Between 2008 and 2009, its website was temporarily closed for a statement it had published concerning an imprisoned HIV/AIDS activist; in addition to the increased harassment staff and clients endured in the lead-up up to the Olympics one of its conferences was cancelled after the arrival of the police, who came to check the ID cards of all fifty participants.

WAN YANHAI, the head of Aizhixing, has repeatedly been detained by Beijing police. He was “disappeared” between November 24 and 27, 2006. In November 2007, when asked whether he was worried about being kidnapped again prior to the World AIDS Day, Wan replied, “I try my best to maintain an open mind, but sometimes it can be dangerous. When I encounter a difficult situation, I may choose to step back [to ensure my safety].” Not long after this interview, on December 26, 2007, while working in Yunnan Province, Wan was summoned by the Beijing authorities for “A chat,” forcing him to hurry back to the capital, where he was picked up and interrogated and detained for 30 hours. Wan’s family and colleagues were unable to contact him during his forced “disappearance.” Since then, Wan has been subjected to residential surveillance during “sensitive” periods, such as the China-US Human Rights Dialogue in May 2008 and the 20th Anniversary of the Tiananmen Massacre in June 2009.

CASE STUDY #4

SANYUAN STUDY GROUP

On December 18, 2006, “Sanyuan Study Group” (仨元学社), an online community promoting 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, who said that the group was banned because it “failed to legally register” and was therefore an “illegal organization.”

Yao challenged this decision by filing an administrative lawsuit with the Chongwen District Court, marking the first time an online group had become involved in administrative litigation. The lawyer for the Study Group argued that, because it had no members or a constitution, it was not a social organization as defined by the Regulations for Social Organizations; the registration procedures outlined in the regulations were therefore not applicable to the group and neither did the banning by the Bureau have any legal basis. The case was heard on May 25, 2007, but, in the end, the matter was settled outside of court. Sanyuan Study Group was allowed to continue after it changed its internet name to “Chinese Civilization Net” (中华文明网).

An unequal playing field

Organizations not registered with the MCA often experience difficulty attracting funding, especially from such sources as international foundations. The government has publicly demonized independent organizations which solicit international funding, branding them “unpatriotic,” puppets of “anti-China forces” that “make China unstable”; international foundations operating in China have been threatened with closure to prevent them funding such groups.¹¹ By contrast, the government encourages these same foundations to fund official institutions and GONGOs.



Xu Zhiyong, director of Gongmeng

Moreover, many foundations are bound by internal guidelines prohibiting them from funding unregistered organizations. For the sake of keeping an office open in China, most international foundations impose restrictions on their own activities to accord with the official line. In this repressive environment, most foreign funding ends up benefiting those closely tied to the government. (See Case Study #6)

CASE STUDY #5

SHOUGUANG CITY KINDNESS

In August 2007, the Bureau of Civil Affairs in Shouguang City, Shandong Province, announced in the local party paper, the *Shouguang Daily*, 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 was a group of Shouguang residents who had volunteered to visit the elderly and help underprivileged children. In just three months the group grew from a handful of people to more than 150. Prior to its banning, the volunteers organized a benefit performance to raise money for a group of six orphans. Halfway through the program, Urban Inspection Officers (城管) and officials from the Shouguang Municipal Bureau of Civil Affairs arrived and halted the performance, announcing that the organization had “not completed registration” and was therefore prohibited from staging such activities.

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

CHRD is not aware of any individuals having been imprisoned for accepting foreign funding for the purpose of setting up or running an organization. However, Gongmeng director **Xu Zhiyong**, has been detained on the charge of “tax evasion” related to funding received from Yale University, and thus might be the first such person if convicted. In general, the threat of being prosecuted for receiving funding is ever present. The government has routinely used activists’ acceptance of funds from abroad as “evidence” of them having “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 imprisonment and deprivation of political rights for three years for “inciting subversion of state power.”¹² Part of the “evidence” used to convict him were two wire transfers from the United States to his accounts, dated March 12 and April 22, 2008, even no evidence was presented to suggest any of the money received was used to “incite subversion.”

The overall effect of official regulation and the self-imposed restrictions of funders is to create an uneven playing field. While government-backed, MCA-registered organizations enjoy legitimacy and access to resources under the shelter of the system, unregistered organizations often dwell in the grey area between “legality” and “illegality,” living under the constant threat of unwelcome attention from the authorities.

IV. Workers, unite! But only to join the official union

The right to form independent trade unions is protected by Article 8 of the ICESCR, which China has signed and ratified. However, when the government ratified the ICESCR in 1997, it also made a reservation to Article 8.1 (a),

the right to form trade unions, stating, “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.”

CASE STUDY #6

INDEPENDENT GROUPS EXCLUDED FROM ELECTION OF NGO REPRESENTATIVES TO GLOBAL FUND

On April 24, 2007, Chinese officials ran an election to appoint patients' representatives and NGOs to the board of the Global Fund to Fight AIDS, Tuberculosis and Malaria Coordination Team. Since the government only allowed organizations registered with the MCA to participate, many independent organizations protested against the election.

On May 17 and 19, the excluded groups organized an alternative election following the same protocols as the Global Fund election. Eighty-five NGOs submitted their applications and 75 were found to be qualified to be candidates for election, 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. Wan challenged the official election, saying it lacked transparency and was controlled by government; in response Qiang accused Wan of deliberately fomenting trouble.

According to Wan, the official committee has failed to properly monitor the way international funding is used, with money ending up in the pockets of officials rather than going to those whom it would benefit most.

“For example,” Wan said, “funds from a clinic in Shuangmian Village in Henan Province were used to send 40 officials from the Health Bureau on a trip to Yunnan and Thailand. And some of the money was spent installing 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 follow HIV/AIDS activists who have been working to set up independent services for villagers. In our opinion, money from the Global Fund has frequently been used not to help people, but to assist in the violation of human rights!”

Although the Trade Union Law (工会法, hereafter referred to as the “Union Law”) stipulates “Trade unions are mass organizations of the working class formed by workers and on a voluntary basis,” Chinese workers do not in practice have the right to form independent trade unions. The current Union Law, effective since October 27, 2001, replaced an earlier version promulgated in June 1950 and sets in place a hierarchical, centralized system of managing trade unions, with the All-China Federation of Trade Unions (ACFTU) at the top of the hierarchy. It, in turn, is under the direct control of the CCP's United Front Department with its leadership appointed by the CCP authorities. The ACFTU's current chairman, Wang Zhaoguo (王兆国), is a high-ranking cadre in the CCP.

The ACFTU therefore functions as a branch of the party-state, as do the unions under its leadership.

The Union Law stipulates that a union at a higher level “exercises leadership” over lower level unions, which includes overseeing the establishment of new unions; thus, effectively prohibiting workers from setting up an independent union outside the control of the ACFTU. Moreover, although a union’s leadership is chosen or removed by the workers according to procedures outlined in the Union Law, a higher-level union always retains the power to vet the workers’ choice.

Because the leadership of ACFTU and the trade unions under it are not freely elected, they primarily represent the interests of the authorities rather than the interests of their members. Unable to defend their rights through their official unions, workers have resorted to alternative forms of association, such as releasing public letters addressed to the authorities, or collectively petitioning government offices. However, as these forms of association are outside the remit of the Union Law, workers often encounter official retaliation in response to their right to associate and put forward their demands. (See Case Study #7)

An example of workers lacking autonomous unions: taxi strikes in 2008

Conflicts between workers and their employers sometimes erupt into “mass labor incidents” such as strikes, protests and factory sit-ins. Despite the 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 an “incitement to subversion of state power,” the absence of independent labor unions goes some way to explain the frequency with which these incidents occur.

Through collective action sometimes workers are able to force modest concessions from the authorities. In a series of taxi strikes which broke out in Chongqing on November 3, 2008, 8,000 drivers went on strike; a week later, on November 10, 160 drivers in Yongdeng County, Gansu Province, and nearly a hundred in Sanya City, Hainan Province also struck. The taxi drivers were unhappy that, with little government oversight, taxi companies had for years been able to monopolize the taxi rental market, resulting in drivers having to pay exorbitant fees. For example, some drivers reported that while the local government sells a 25-year taxi license at 50,000 RMB, the companies rent the vehicles to the drivers for 300,000 RMB for a period of five years, generating a 3000% profit. Continued protests and negotiations between drivers and local authorities paid off in Chongqing, where the rent was lowered and the taxi rental market disciplined by the local government. In Sanya City, the Director, Assistant Director and Party Secretary of the Transportation Bureau resigned following the strikes.

Drivers’ grievances center on the government-controlled system of taxi management, which places an undue burden on drivers, as successive layers of business people 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 the system; taxi drivers continue to stage strikes across the country. In 2009, CHRD documented strikes in four different provinces, involving 5,000 drivers in Xining City, Qinghai Province,¹³ 350 drivers in Qianjiang City, Hubei Province,¹⁴ 1,000 drivers in Yueyang City, Hunan Province¹⁵ and 50 drivers in Poyang County, Jiangxi Province.¹⁶

Following the work stoppages, commentators pointed out that because the drivers lack their own unions to

represent their interests and negotiate with the companies and the government, grievances accumulate until they reach critical mass and explode into strikes.¹⁷ Even the ACFTU acknowledges that taxi drivers currently lack legitimate means to air their complaints and have them dealt with. Taxi drivers could join the local official unions, 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 under the leadership of the local union for transport workers, which is in turn under the leadership of the local ACFTU branch.¹⁸

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, pointing out that, in 2004, Heilongjiang Jixi Mining Group “re-structured” the state-owned Didao coal mine and, ignoring proper procedures, laid off thousands of workers without proper compensation. They alleged that prior to the re-structuring of the mine, the Mining Group had not, as was required by law, discussed or passed the resettlement policy at a workers’ representatives meeting. The miners demanded that the State Council preside over the liquidation of the mine and ensure that the workers receive fair compensation.

Thousands of miners were laid off, receiving just 20% of the resettlement fund the mine managers received from central government to disburse as compensation. The other 80% of the fund, together with the remaining capital and property went to the management, which included the leadership of the mine, the local mining bureau and sundry government officials. The Didao Mine, which continues to operate, is now privately owned by those same officials.

The workers’, whose demands went unheeded, suffered harassment for their collective action. On May 24, 2008, **YUAN XIANCHEN (袁显臣), a rights activist and the miners’ legal advisor, had been publicizing their plight and was taken into custody by the authorities. On March 4, 2009, he was convicted of “inciting subversion of state power” and sentenced to four years imprisonment and five years deprivation of political rights. Between Yuan’s apprehension and his formal detention on May 29, 2008, he was repeatedly tortured in the Beijing Municipal State Security Bureau Detention Center to extract a confession.**

After constant official harassment and repression the mine workers have now abandoned their efforts to seek appropriate compensation.

However, the low rate of unionization among taxi drivers does not mean that they lack interest in forming unions. A drivers’ representative pointed out that, in some taxi companies in Chongqing, there were official unions for drivers. However, as the employers were often the chairmen of the unions few taxi drivers were motivated to join.¹⁹ Although the 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 state that in the selection of chairmen, a union at a higher level holds the decision-making power in appointment of leaders. Although the

strikes forced the government to take note of the taxi drivers' problems, officials continue to ignore the fact that drivers want an *independent* union, with leadership chosen by its members. In 2005, taxi drivers in Chongqing tried to achieve this but their application to establish a union was rejected because it "failed to fulfill the necessary conditions."²⁰

The Chongqing drivers might consider themselves fortunate as the effort to organize a union can result in consequences much worse than a simple rejection. In May 2008, **Chen Yuping** (陈玉平), a representative of dismissed workers from Jilin Oilfields in Songyuan City, Jilin Province, was sentenced to 18 months RTL for "inciting and creating trouble" and "disturbing social order." Chen and other representatives had been preparing an application to establish an independent trade union for the dismissed workers. Before his detention, he and his fellow organizers were summoned and warned by National Security police from the Songyuan City PSB not to establish the union. Around the time Chen was arrested, two other representatives were administratively detained for ten days for "accepting interviews with foreign media."

V. Political associations

Political association is restricted in China to an extreme degree. Political power is monopolized by the CCP and no other independent political parties exist. Officially, China has eight other political parties in addition to the CCP,²¹ but in practice they are subsumed under the CCP and do not exist independently from the Party. Whenever citizens have attempted to establish an autonomous political party, the government has always reacted swiftly and brutally, often sentencing the organizers of these nascent bodies to lengthy prison terms. Because of this repressive policy towards the formation of new political groups, there have been very few serious attempts to establish new parties since the CCP came to power in 1949. Those that dared, such as the China Liberty & Democracy Party of China (中国自由民主党), founded in 1989; the China Republican Party (中国共和党), founded in 1991; the China Democracy Party (中国民主党), founded in 1998; and China New People's Party (中国新民党), founded in 2007, were crushed and their organizers imprisoned. Individuals who form small discussion groups with the purpose of debating China's political reforms are treated as threats by the government, which, from time to time, reacts harshly towards them.

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

Immediately after the CPD's attempt to register with the MCA and the authorities' subsequent crackdown, the Regulations for Organizations were amended and the current version put into service 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 states, "Chinese people of all nationalities" are "under the leadership of the Communist Party of China." This revision reiterates the relationship between the right to freedom of

association, proclaimed in Article 35, and the CCP's monopoly of power, declared in the Constitution's introductory statement: 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. The revision closes the loophole previously available to those who aspired to form political associations.

New Youth Society

On May 20, 2000, 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) founded "New Youth Society" (新青年学会) as a forum for discussion of political reform in China. Three months later, **Yang Zili** (杨子立), **Huang Haixia** (黄海霞) and **Li Yuzhou** (李宇宙) joined the group; it dissolved near the end of 2000 as its members, who were either university students or recent graduates, were too busy to continue with their meetings.

On March 13, 2001, to the great surprise of members of the New Youth Group, police from the Ministry of State Security took them into custody. They were subjected to repeated interrogations, some lasting for more than 10 hours. After their release, Zhang Yanhua, Huang, and Fan publicly disclosed that they had been threatened during their interrogations and their statements, in which they referred to the New Youth Society as an "anti-CCP and anti-socialist" organization, were written 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 letter saying that the statement he had signed 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 prosecutor consisted of statements by Zhang Yanhua, Huang, Fan and Li. By that time, the four had either informed the court or publicly declared that their statements, written 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 had simply met to exchange 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 imprisonment while Yang and Zhang Honghai were sentenced to eight years apiece. After serving their full sentences, Yang and Zhang were released on March 12, 2008.

The chilling example of what happened to the members of the New Youth Society sent out a clear signal: no matter how innocent your intentions may be, associating with others on the basis of a shared interest in political change could attract the attention of the authorities and potentially lead to devastating personal 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; it opposes "The tyranny of communism," and is in favor of propagating "The Three Principles of the People (三民主义) and, together with members of the Chinese Nationalist Party," wishes to "promote the cause of peaceful reunification of China."

Ever since the forum was founded the government has referred to the Pan-Blue Alliance as an “unregistered illegal organization.” Its members have been subjected to constant surveillance and have been beaten, detained and imprisoned. The table below lists some of the recent cases, suggesting that the persecution is coordinated and targets members of the Alliance nationwide.

Table 2: Persecution of members of the Pan-Blue Alliance

NAME	RESIDENCE	DESCRIPTION OF PERSECUTION
Cai Aimin (蔡爱民)	Zhengzhou City, Henan Province	Detained for 16 days by Zhengzhou police on May 26, 2007. Subsequently sent to RTL for 21 months for “Disturbing social order.” When released, Cai continued his activism. On May 24, 2009, he was seized in Beijing, where he had been petitioning about corruption and forced appropriation of farmland, and involuntarily returned to Zhengzhou.
Hu Jing (胡敬)	Chongqing Municipality	Confined to a psychiatric hospital three times. Most recently, 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	Taken into custody on March 1, 2008, and since then formally arrested for “Disturbing social order.”
Li Zhuoxi (李卓熹)	Changsha, Hunan Province	Detained on June 3, 2008 by police from Dazhou PSB in Sichuan on suspicion of “Internet fraud.” Released from detention in July 2008 and put under residential surveillance. After the end of the Paralympics in September 2008, residential surveillance was lifted.
Wen Yan (文炎)	Wuhan City, Hubei Province	Taken away by police from his home at the end of May 2007 and has not been seen since.
Wei Zhenling (魏桢凌)	Hangzhou City, Zhejiang Province	CHRD learned on August 26, 2008, that Wei was sentenced to 21 months RTL for “Gambling and solicitation of prostitutes.”
Xie Fulin (谢福林)	Changsha City, Hunan Province	Taken away from his home on June 1, 2009, by National Security police and not released until after the end of the anniversary of the 20 th Anniversary of Tiananmen Massacre on June 4, 2009. Has been detained again since July 22, 2009 on suspicion of “Stealing.”
Xiong Jiahu (熊家湖)	Chongqing Municipality	Sentenced on June 26, 2007, to two years RTL for “Soliciting prostitutes.”
Zhang Qi (张起)	Chongqing Municipality	Sentenced on July 7, 2009, to four years imprisonment for “Inciting subversion of state power.”
Zhang Zilin (张子霖)	Hunan Province	Sentenced on February 21, 2008, to two years imprisonment for “Fraud and extortion.” Was repeatedly beaten while imprisoned and forced to perform heavy labor for over 13 hours a day. 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 the Zhejiang Provincial Office of Civil Affairs to register a social organization. It included the “Declaration of the 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



Members of the Pan-Blue Alliance

the military” and “totally eradicate... political dictatorship.” This was the first time since the CCP came into power in 1949 that an opposition party had tried to formally register with the government. 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 across the country were taken into police custody. On December 17, 1998, **Qin Yongmin** (秦永敏), from Hubei Province, was convicted of “subversion of state power” and sentenced to 12 years imprisonment. In the same week, Wang Youcai and **Xu Wenli** (徐文立), both from Beijing, were convicted on the same charge and sentenced to 11 and 13 years imprisonment, respectively. Dozens of CDP organizers were reportedly subjected to 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 is still in prison.

The persecution of members of the CDP continues to this day. In late June 2008, **Xie Changfa** (谢长发), a CDP member from Changsha City, Hunan Province, was detained by National Security police from the Changsha PSB. On April 28, 2009, Xie was tried on the charge of “subversion of state power” by Changsha City Intermediate Court. The prosecutor alleged he engaged in subversive activities because he participated in organizing the CDP in 1998, that he has been “working as a CDP member for some 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.

In recent years other members of the CDP have also been harassed, subjected to residential surveillance and otherwise persecuted. On March 14, 2009, **Hu Junxiong** (胡俊雄), an internet engineer working in Beijing, was

forcibly returned to his hometown in Huanggang City, Hubei Province. Police from the PSB and the Ministry of State Security have persisted in harassing Hu even though he ceased his involvement with the CDP since helping to found it in 1998.²² On February 7, 2009, **Deng Yongliang** (邓永亮), an internet writer seeking employment in Shanghai, was forcibly returned to his previous residence in Xian, Shaanxi Province. The Shanghai police told Deng that as an “important member” of the CDP, he was not allowed to stay in Shanghai.

During major national events, CDP members are often detained and interrogated. In the lead-up to the 2008 Olympics **Tao Jun** (陶君), based in Guangzhou City, Guangdong Province, was interrogated for some hours on April 18 about the CDP and the Olympics.²³ **Lu Honglai** (吕洪来), from Tianjin, was secretly detained for nearly three months, between July and October 2008.²⁴ 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 to discuss the relief effort.²⁵

CDP members who have been released after serving time in prison are still subjected to deprivation of political rights and are frequently interrogated and threatened. On April 2, 2009, **Gao Hongming** (高洪明), a Beijing CDP member 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 critical articles.²⁶ On March 23, 2009, **Zha Jianguo** (查建国), another CDP member from Beijing, had his home searched and was interrogated for 12 hours about his signing of *Charter 08* and his meeting with foreign media, “political” activities he was forbidden to engage in.²⁷

China New People’s Party

In early December 2007, **Guo Quan** (郭泉), a professor at Nanjing Normal University, issued a public letter calling for political reforms, in which he 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; on December 14, CDL Nanjing Normal University Branch, citing “great political pressure,” expelled him. On December 17, Guo formally announced he would organize the China New People’s Party (CNPP).

Although at its inception CNPP had only a few members, the authorities nonetheless were nervous about it. After the Sichuan earthquake, in May 2008, Guo was subjected to ten days of administrative detention in Nanjing. Prior to his detention, he had organized a meeting with fellow party members to discuss their response to the disaster. He alleged that the police kept him in detention after he refused to provide them with a list of CNPP members.²⁸ On November 13, 2008, Guo was formerly taken into police custody and held on suspicion of “subverting state power.” According to his lawyer, Guo has endured 33 interrogations; he remains in custody and has not yet been tried.²⁹

To maintain the CCP’s one-party monopoly, the Chinese government reacts swiftly to attempts by individuals to organize politically and, in defiance of international pressure and domestic condemnation, it punishes them harshly. Its actions convey an unequivocal message: citizens should, at all cost, avoid political association.

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 government also monitors spontaneous initiatives by individuals who choose to exercise their right to associate freely.

Publishing open letters addressed to the government concerning 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 signed by a large number of people, the government usually reacts by seizing the organizers and penalizing the signatories.

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 an open letter entitled, “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 in sympathy with other victims of land loss in cities where officials had used the Games as a pretense to grab land or housing without paying adequate compensation. Following Yang’s arrest, two village representatives from Heilongjiang, **Yu Changwu** (于长武) and **Wang Guilin** (王桂林), were sentenced to RTL for helping Yang to collect the signatures. “Barefoot lawyer” **Yuan Xianchen** (袁显臣), also from Heilongjiang, was also imprisoned for helping Yang.³⁰

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

The government is especially suspicious of initiatives taken by activists and dissidents and it often tries to stop them even when they involve providing assistance to people in distress. After the protests and riots in the Tibetan areas in March 2008, 21 lawyers, in a letter made public on April 2, 2008, extended an offer to provide legal aid to the arrested Tibetans. They were summoned for questioning by the authorities, made to admit wrongdoing, told to dissociate from the initiative, and threatened with punishment. One lawyer who participated in the initiative, **Teng Biao** (滕彪), lost his lawyer’s license after the Beijing Justice Bureau 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 consuming tainted milk products met a similar fate. The initiative, which, by October 7, 2008, had attracted the participation of 107 lawyers in 23 provinces and cities, gradually dissolved after the local justice bureaus exerted concerted pressure on the lawyers. 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 donating it to the victims. Niubo Web (牛博网), an online activist community, had its bank account frozen by the authorities and its members were summoned and interrogated for collecting donations.³¹

VII. Striving for autonomy in established organizations

As more associations and groups are founded and some strive for greater autonomy from the state, perceptions and expectations about such organizations have begun to change. Some progressive members within GONGOS have realized that their organizations are more focused on representing the government's position rather than serving the needs of their constituencies and along with this realization a push towards greater autonomy and self-governance has developed. A dramatic example of this was provided by a group of lawyers who lobbied 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 urging the BLA to implement direct elections by the end of 2008. The leaders of the Lawyers Association are currently hand-picked by the municipal justice bureau in mock elections; according to the signatories, at least 90% of Beijing's lawyers chose not to vote in these elections.³²

The BLA is the official lawyers' association under the All-China Federation of Lawyers (ACFL). The Statutes of the ACFL³³ and the Lawyers Law³⁴ establish a hierarchical, centralized management 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, with all local lawyers' associations below it. The local associations may draft their own constitutions, but these must not infringe the Statutes of the ACFL. Article 4 of the Statutes states that a lawyers' association at a lower level accepts the supervision of an association at a higher level, and the association at the highest level, the ACFL, in its turn accepts supervision by the Justice Ministry. In practice, lawyers' associations are extensions of the Justice Departments and have been established to manage lawyers in China, even though both the Lawyers Law and the Statutes of the ACFL claim they are "are voluntarily formed by lawyers to realize the common aspirations of their members."

Lawyers are not permitted to opt out of their official associations as membership is mandatory in order to obtain a license to practice law. The associations also hold the power to pass or fail lawyers in the annual evaluation of their performance; failure to pass means a lawyer's license is not renewed and they are barred from practicing law. The 35 lawyers who signed the public letter argued that, contrary to what the Lawyers Law says, the associations are not voluntarily formed by lawyers and they do not represent their rights and interests.

The lawyers' lobbying for direct elections was not received sympathetically. On September 5, 2008, the BLA released a statement:

*Any individual who uses SMS messages and the internet to privately link up and associate on the pretext of promoting democratic elections, to publish inflammatory speech, to spread rumors which confuse people's minds, to attempt to recruit lawyers who do not know the truth to get their support for the so-called "direct election of Beijing Lawyers' Association," is illegal. They want to exploit an opportunity... to reject the current lawyer management system, the justice system and even the political system that exists in our country.*³⁵

The Chaoyang District Bureau of Justice in Beijing, whose jurisdiction includes law firms which employed 19 of the 35 signatories, called on the heads of those firms to demand that the lawyers explain their motives for endorsing the petition. Under pressure from government officials, Cheng, Zhang, and other signatories were asked by their work units to resign from their jobs. **Yang Xuelin** (杨学林), another signatory, was “personally received” by officials at the Xicheng District Bureau of Justice in Beijing.³⁶ Some of the lawyers who participated in the lobbying complained that their phones had been tapped and they had been closely monitored and followed.

The lawyers did not immediately succumb to the pressure. On January 12, 2009, 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 the direct elections for the leadership of the Association. Yang also handed out flyers outlining his election pledges.³⁷

The justice authorities retaliated again: on February 17 Beijing's Yitong Law Firm (北京忆通律师事务所) was notified by the Beijing Haidian District Bureau of Justice that it would have to close for six months for “re-organization”; it is believed that the firm was punished for its support of direct elections.³⁸ Nevertheless, the lawyers went ahead and ran for office but they were repeatedly removed from the list of candidates: Cheng and Zhang were not on the list for Chaoyang District even though they met all the requirements for candidacy. In the first round of voting, though the lawyers advocating direct elections were not listed on the ballot, other lawyers 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 names of the five lawyers were missing from the list of candidates on the second round ballot on March 4. According to Yang, the police were on hand to observe the voting.³⁹

On May 31, the deadline for the annual review and renewal of lawyers' licenses, at least 20 lawyers, half of whom had participated in calling for direct elections, were notified that their licenses had not been renewed.⁴⁰ According to an official announcement, licenses for **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), had been formally revoked.⁴¹ Others lawyers waiting for notification of whether their licenses have been renewed or not cannot practice.

The lawyers' demands for greater autonomy within their professional association has ended, with those most active in the call for direct elections paying a steep price. Their fate offers little hope for members of other GONGOs inclined to seek greater autonomy for their organizations.

▼ Recommendations

CHRD calls on the Chinese government to live up to its responsibility to protect the right to freedom of association. It should:

- Ratify the ICCPR.
- 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 and 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; and
 - ❖ 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, in accordance with Article 8.2 of the ICCPR, 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.” Such a definition must be narrow, allowing the authorities to deny only in exceptional circumstances the right to associate. 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 requirement that a union must defer to another union above it in the hierarchy. The Trade Union Law should be amended so that it protects an individual’s right to form and join independent trade unions and stipulates 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, which must clarify 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 and release those imprisoned for such acts.

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; Ministry of Civil Affairs, 2007 Civil Affairs Development Statistics Report (2007年民政事业发展统计报告).

² This number includes both social organizations as well as non-enterprise units. See below for a definition of these two types of organizations.

³ For example, Yu Keping (俞可平), a Beijing scholar, estimates that there are about three million social organizations in China. See “A Heated Debate between Beijing University and Tsinghua University: Has China Developed a Civil Society?” (北大清华激辩：中国迈进公民社会？), January 7, 2009.

⁴ Wang Ming (王名) in Zhao Lingmin (赵灵敏), “Giving NGOs Calcium Supplements” (给NGO “补钙”), February 23, 2007.

⁵ The Regulations for Registration and Management of Social Organizations, promulgated in 1989, in turn replaced an earlier administrative

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