Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**263**
Land:	Kina
Kilde:	Human Rights Watch
Titel:	Promises Unfulfilled
Udgivet:	11. januar 2011
Optaget på baggrundsmaterialet:	20. juni 2011

China

Promises Unfulfilled

An Assessment of China's National Human Rights Action Plan

HUMAN RIGHTS WATCH

Promises Unfulfilled

An Assessment of China's National Human Rights Action Plan

Printed in the United States of America
ISBN: 1-56432-734-5
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: http://www.hrw.org

JANUARY 2011

ISBN: 1-56432-734-5

Promises Unfulfilled

An Assessment of China's National Human Rights Action Plan

Map of China

Provinces and Autonomous Regions of the People's Republic of China

NHRAP Categories

The NHRAP is organized under the following categories:

I. Guarantee of Economic, Social and Cultural Rights

1. Right to work
2. Right to basic living conditions
3. Right to social security
4. Right to health
5. Right to education
6. Cultural rights
7. Environmental rights
8. Safeguarding farmers' rights and interests
9. Guarantee of human rights in the reconstruction of areas hit by the devastating earthquake in Wenchuan, Sichuan province.

II. Guarantee of Civil and Political Rights

1. Rights of the person/Rights of detainees
2. The Right to a Fair Trial
3. Freedom of Religious Belief
4. The right to be informed
5. The right to participate
6. The right to be heard
7. The right to oversee

III. Guarantee of the Rights and Interests of Ethnic Minorities, Women, Children, Elderly People and the Disabled

1. The rights of ethnic minorities
2. Women's rights
3. Children's rights
4. Senior citizens' rights
5. The rights of the disabled

IV. Education in Human Rights

V. Performing International Human Rights Duties, and Conducting Exchanges and Cooperation in the Field of International Human Rights

1. Fulfillment of international human rights obligations
2. Exchanges and cooperation in the field of international human rights

The terminology in this report is consistent with international covenants and human rights law, and therefore differs slightly in some places from the terminology employed in the NHRAP.

Summary

In April 2009, the Chinese government unveiled its 2009-2010 National Human Rights Action Plan (NHRAP), which sets forth both a program of goals and a timeline for acting on them.[1] The Chinese government's willingness to draft and publicly release a document which explicitly addresses important human rights issues in China deserves praise. Nearly two years on, however, deficiencies in the action plan and government failures to adequately implement some of its key commitments have rendered it largely a series of unfulfilled promises.

At the time of its release, the NHRAP appeared to mark another shift from the Chinese government's traditional posture of criticizing human rights as an imposition of "Western values"[2] to embracing them as a national goal to be realized through concrete assessment targets.[3] The NHRAP touches on many important rights issues while omitting some very notable ones. Its style is hortatory—asserting accomplishments and admitting some difficulties—but opaque. On most issues, the document lacks benchmarks or the kind of detail that would allow for meaningful assessment of progress. The question of whether the NHRAP is mainly an effort to deflect internal and external criticism or a tentative step toward taking rights more seriously is still an open question.[4] If the action plan is to serve a more useful role in the future, the Chinese government should update and revise it, including by addressing the shortcomings detailed in this report.

The NHRAP is China's first official human rights action plan, and reiterates the government's existing human rights commitments.[5] The NHRAP notes that the government "has a long

---

[1] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_1.htm (accessed August 12, 2010).

[2] "China rejects Western standards on human rights, Vice FM says," Xinhua News Agency, July 30, 2010, http://english.peopledaily.com.cn/90001/90776/90883/7086326.html (accessed December 21, 2010).

[3] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_1.htm (accessed August 12, 2010), introduction, para 2. This paragraph states: "It is worth mentioning that since the introduction of the reform and opening-up policy at the end of 1978, China has enshrined respect for and protection of human rights in the Constitution as a major principle of government, and has taken effective measures to promote the cause of human rights."

[4] The Chinese government described the NHRAP as a response to resolution No. 71 of the United Nations' 1993 World Conference on Human Rights, which recommends "that each state consider the desirability of drawing up a national action plan whereby that State would improve the promotion and protection of human rights." "China re-elected to UN Human Rights Council," Xinhua News Agency, May 12, 2009.

[5] Article 33 of the Constitution of the People's Republic of China asserts that "The state respects and preserves human rights." The Chinese government described the NHRAP as a response to resolution No. 71 of the United Nations' 1993 World Conference on Human Rights, which recommends "that each state consider the desirability of drawing up a national action plan whereby that State would improve the promotion and protection of human rights."

road ahead in its efforts to improve its human rights situation."[6] It also stresses the Chinese government's emphasis on prioritizing "rights to subsistence and development" over civil and political rights, but acknowledges that "all kinds of human rights are interdependent and inseparable," an important statement.[7] The plan does not have the force of law, but states that "Governments and government departments at all levels shall make the action plan part of their responsibilities, and proactively implement it."[8]

The NHRAP describes itself as the result of "broad participation" of 53 named government ministries, agencies, and government-organized nongovernmental organizations, along with academics from nine research institutions coordinated by the Information Office of the State Council and the Ministry of Foreign Affairs.[9] The Ministry of State Security, which oversees agencies frequently implicated in human rights abuses, such as the Public Security Bureau (PSB), is not among the state organs that were reported to be involved.[10]

The NHRAP is divided into five main categories, beginning with an introduction. Those categories are divided as follows: guarantee of economic and social rights; guarantees of civil and political rights; guarantee of the rights and interests of ethnic minorities, women, children, elderly people, and the disabled; education in human rights and performing international human rights duties; and conducting exchanges and cooperation in the field of international human rights. The NHRAP lists the specific rights included under each category, explains the Chinese government's assessment of historical progress to date in protecting those rights, and describes measures to improve that protection.

---

[6] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_1.htm (accessed August 12, 2010), introduction, para. 3.

[7] Ibid., introduction, para. 6.

[8] Ibid., introduction, para. 9.

[9] Ibid., introduction, para. 7. Those government ministries, agencies, and government-organized nongovernmental organizations include the Information Office of the State Council and Ministry of Foreign Affairs, the Legislative Affairs Committee of the Standing Committee of the National People's Congress, Committee for Social and Legal Affairs of the Chinese People's Political Consultative Conference National Committee, Supreme People's Court, Supreme People's Procuratorate, National Development and Reform Commission, Ministry of Education, State Ethnic Affairs Commission, Ministry of Civil Affairs, Ministry of Justice, Ministry of Human Resources and Social Security, Ministry of Health, China Disabled Persons' Federation, and China Society for Human Rights Studies, Nankai University, Shanghai Academy of Social Sciences, Shandong University, China University of Political Science and Law, Chinese Academy of Social Sciences, Beijing University, Wuhan University, Renmin University of China, and the Central Party School. The NHRAP states that several symposia on the drafting of the plan were convened with representation from over 20 organizations, such as China Law Society, All-China Lawyers' Association, China Legal Aid Foundation, China Environmental Protection Foundation, Chinese Society of Education, China Women's Development Foundation, China Foundation for Poverty Alleviation, China Foundation for Disabled Persons, and China Foundation for Human Rights Development.

[10] Ibid.

Near the half-way mark of the NHRAP period in December 2009, the Chinese government expressed confidence that it would achieve its goals and that "for most of the (NHRAP's) targets and tasks, which were stipulated in the action plan and expected to be finished in two years, 50 percent, or even 65 percent for some, have been accomplished so far," without providing any details related to those statistics.[11] That assessment, the Chinese government's only public review of the NHRAP's progress up to the time of writing of this report, was presented in a speech by Wang Chen, the minister in charge of the State Council's Information Office.[12] That assessment also noted that some unspecified NHRAP goals had not been achieved due to "some problems and defects" in implementation, including a tendency by unnamed local governments and departments to "have not actively included the human rights protection in their work."[13] The assessment did not elaborate on those failures.

The NHRAP's explicit two-year time frame for the achievement of specific goals was a welcome signal that the Chinese government intended to devote attention to its human rights record. This re-articulation from the Chinese government of its commitments to human rights already guaranteed by Chinese domestic law and international instruments has already proved valuable for human rights activists, both within China and abroad. The NHRAP is also a useful metric for the government's progress in actually honoring those commitments, and created an opportunity both inside and outside the country to discuss the development of human rights in China.

The NHRAP is also a useful counterpoint for the government in rebutting foreign criticism of its human rights record. China's English-language state media, including Xinhua News Agency, Xinhua's China Economic Information Service, Xinhua Electronics News, Xinhua China Money, Xinhua Business Weekly, *China Daily,* and *Global Times* published a combined total of 73 reports on the NHRAP's objectives between April 13, 2009, and December 14, 2009. However, only one of those reports assessed the Chinese government's performance in executing the plan.[14]

When the NHRAP was first announced in April 2009, Human Rights Watch noted that the plan could be an opportunity for more diverse voices to discuss human rights issues in China and

[11] "Full text: Speech on implementation of National Human Rights Action Plan of China (2009-2010) (4)," Xinhua News Agency, December 3, 2009.

[12] Wang Chen also serves as both deputy director of the Chinese Communist Party's (CPC) Publicity Department (formerly known as the Propaganda Department) as well as director of the CPC's External Propaganda Department.

[13] Ibid.

[14] "Full text: Speech on implementation of National Human Rights Action Plan of China (2009-2010)," Xinhua News Agency, December 3, 2010.

for some of these views to be channeled into an official document. Yet Human Rights Watch also raised questions about the utility of the NHRAP and the motivations behind it.[15]

As the NHRAP period draws to a close, this report critically assesses it, including areas of progress, deficiency, and missed opportunities over its two-year duration. This document does not provide an evaluation of China's overall human rights record, but rather assesses the extent to which the Chinese government delivered on its NHRAP objectives on key human rights from 2009 to 2010. The answer is mixed.

At the same time as the Chinese government has pointed to the NHRAP as evidence of its commitment to human rights, the government has systematically continued to violate many of the most basic rights the document addresses. It has taken unambiguous steps to restrict rights to expression, association, and assembly. It has sentenced high-profile dissidents to lengthy prison terms on spurious state secrets or "subversion" charges, expanded restrictions on media and internet freedom[16] as well as tightened controls on lawyers, human rights defenders, and nongovernmental organizations. It has broadened controls on Uighurs and Tibetans, and engaged in increasing numbers of enforced disappearances and arbitrary detentions, including in secret, unlawful detention facilities known as "black jails."[17]

The Chinese government's reaction to the Nobel Prize Committee's October 8 decision to award the 2010 Nobel Peace Prize to imprisoned writer and human rights activist Liu Xiaobo shows the chasm between the aspirations embodied in the NHRAP and the government's actual behavior. The Chinese government responded to the Nobel Peace Prize announcement with a wave of repression against perceived dissent. The Chinese

---

[15] Chris Buckley, "China sets human rights agenda for sensitive year," Reuters, April 12, 2009.

[16] Phelim Kine (Human Rights Watch), "China's Internet Crackdown, commentary, *Forbes.com,* May 27, 2010, http://www.hrw.org/en/news/2010/05/27/chinas-internet-crackdown.

[17] "China: Sham Trial of Veteran Rights Activist," Human Rights Watch news release, November 23, 2009, http://www.hrw.org/en/news/2009/11/23/china-sham-trial-veteran-human-rights-activist; "China: Liu Xiaobo's Trial a Travesty of Justice," Human Rights Watch news release, December 21, 2009, http://www.hrw.org/en/news/2009/12/21/china-liu-xiaobo-s-trial-travesty-justice; "China: New Restrictions Target Media," Human Rights Watch news release, March 18, 2009, http://www.hrw.org/en/news/2009/03/18/china-new-restrictions-target-media; Phelim Kine (Human Rights Watch), "China's Internet Crackdown, commentary, *Forbes.com,* May 27, 2010, http://www.hrw.org/en/news/2010/05/27/chinas-internet-crackdown; "China: Cease Attacks on Rights Lawyers," Human Rights Watch news release, July 17, 2009, http://www.hrw.org/en/news/2009/07/17/china-cease-attacks-rights-lawyers; "China: Chokehold on Civil Society Intensifies," Human Rights Watch news release, April 12, 2010, http://www.hrw.org/en/news/2010/04/11/china-chokehold-civil-society-intensifies; Human Rights Watch, *China – "We are Afraid to Even Look for Them": Enforced Disappearances in the Wake of Xinjiang's Protests ,* ISBN: 1-56432-556-3, October 20, 2009, http://www.hrw.org/en/reports/2009/10/22/we-are-afraid-even-look-them; Human Rights Watch, *China – "I Saw it With My Own Eyes": Abuses by Security Forces in Tibet, 2008-2010,"* ISBN: 1-56432-666-7, July 21, 2010, http://www.hrw.org/en/reports/2010/07/22/i-saw-it-my-own-eyes-0; Human Rights Watch," *China – "An Alleyway in Hell": China's Abusive "Black Jails,"* ISBN: 1-56432-559-8, November 12, 2009, http://www.hrw.org/en/reports/2009/11/12/alleyway-hell.

nongovernmental organization Chinese Human Rights Defenders documented "100 reports of citizens who have been harassed, interrogated, subjected to surveillance, detained, or placed under 'soft detention' across the country" between October 8, 2010, and November 8, 2010.[18] They include Liu Xiaobo's wife, Liu Xia, and Liu Xiaobo's friend and fellow dissident, Yu Jie, who have both been placed under house arrest[19] in the aftermath of Liu's Nobel Peace Prize.[20] Other victims of the Chinese government's anger at the Nobel Peace Prize include a man named Guo Xianliang, who was arrested by Guangzhou police on "subversion" charges after he distributed leaflets about Liu Xiaobo.[21]

In this environment, it is difficult to see the NHRAP as an effective tool for minimizing human rights abuses, or its adoption as indicative of a serious shift in the Chinese government's approach to human rights protections. Even the senior-most officials are not immune. In an October 3, 2010 interview with CNN, Premier Wen Jiabao expressed strong support for greater respect for basic human rights:

> I often say that we should not only let people have the freedom of speech, we more importantly must create conditions to let them criticize the work of the government. It is only when there is the supervision and critical oversight from the people that the government will be in a position to do an even better job, and employees of government departments will be the true public servants of the people. All these must be conducted within the range allowed by the constitution and the laws. So that the country will have a normal order, and that is all the more necessary for such a large country as China with 1.3 billion people.[22]

Chinese government censors blocked all transmission of that interview and forbade circulation of the transcript inside the country.[23]

---

[18] "Nobel Laureate Languishes in Prison, Police Harassment of Activists Rages On," Chinese Human Rights Defenders press release, November 8, 2010, http://chrdnet.org/2010/11/08/nobel-laureate-languishes-in-prison-police-harassment-of-activists-rages-on/ (accessed November 9, 2010).

[19] House arrest, which Chinese police can impose arbitrarily and outside of any legal procedure, results in detention at home, with restricted and monitored internet and phone communications, and 24-hour surveillance by unidentified and often aggressive security forces.

[20] Tom Lassetter, "After Nobel prize to Liu, China's cracked down on dissent," *McClatchy Newspapers*, November 5, 2010.

[21] Ibid.

[22] Fareed Zakaria, "Interview with Premier Wen Jiabao," CNN, October 3, 2010, http://transcripts.cnn.com/TRANSCRIPTS/1010/03/fzgps.01.html (accessed October 7, 2010).

[23] Josh Chin, "Netizens React: Premier's Interview Censored," WSJ Blogs, China Real Time, October 6, 2010 (accessed November 5, 2010).

In addition to recommendations on specific topics in each of the chapters that follow, Human Rights Watch urges the Chinese government to address the failures of the NHRAP by:

1. Forming an independent NHRAP review commission to evaluate the success of the plan's objectives for addressing torture, illegal detention, fair trial, the rights of petitioners, the right to health, and other issues targeted in the NHRAP which have a direct impact on the physical safety, well-being, and quality of life of millions of Chinese citizens. The commission, composed of representatives of key government agencies, academic organizations, nongovernmental organizations, the Public Security Bureau—and in consultation of relevant United Nations special rapporteurs—should analyze the gaps between the NHRAP's objectives and their implementation. The commission should identify the NHRAP's shortfalls in order to create a revised NHRAP with benchmarks, timelines, and periodic assessments to evaluate its implementation;
2. Holding a public consultation that is open to the media on that audit's evaluation of the successes and failures of the NHRAP;
3. Using the results of that public consultation to develop a blueprint for a fresh, updated National Human Rights Action Plan designed to address the failings of the 2009-2010 plan with transparent benchmarks and timelines, and a public enforcement mechanism to ensure the plan's implementation;
4. Ensuring that a new, improved human rights action plan addresses significant omissions in the original NHRAP, including rights abuses related to the Chinese government's household registration, or *hukou*, system, and the omission of human rights guarantees for China's foreign policy, investment, and development initiatives.

Methodology

This report offers a critical assessment of the NHRAP and its implementation, including areas of progress, deficiencies, omissions, and missed opportunities since it was adopted in 2009. It relies on evidence in the public record, including Chinese and foreign media reports, United Nations data, and prior research and reporting by Human Rights Watch. The report does not provide a comprehensive evaluation of China's overall human rights record or a forensic analysis of every provision of the NHRAP, but rather evaluates the extent to which the Chinese government has delivered on a cross-section of key NHRAP objectives from 2009-2010.

I. Progress in Achieving NHRAP Objectives

Over the past two decades, the Chinese government has explicitly prioritized the rights of "subsistence and development," embodied in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which China signed in 1997 and ratified in 2001,[24] over those of the International Covenant on Civil and Political Rights (ICCPR),[25] which China signed in 1998, but has yet to ratify. The Chinese government has justified its focus on the grounds that "the development of economy and the improvement of the people's living conditions is a basic guarantee for greater enjoyment of human rights and fundamental freedoms."[26]

The Chinese government has made progress in alleviating poverty over the past three decades. According to official statistics, Chinese government policies have helped to reduce the number of Chinese living in absolute poverty[27] by more than 200 million since 1978.[28] The Chinese government has also explicitly prioritized "poverty alleviation" as a goal of the upcoming Twelfth Five-Year Plan for economic and social development.[29] Although aggregate statics can be unreliable and poverty and inequality remain serious problems, the government's efforts to improve the standard of living is commendable.

Human Rights Watch has not systematically documented the Chinese government's progress in delivering on economic, social, and cultural rights (ESCR) as articulated by the NHRAP in categories including the right to work, the right to basic living conditions, the right to social security, and the right to education. Instead, Human Rights Watch has prioritized the exposure of the urgent and egregious abuses by the Chinese government of its citizens' civil and political rights which often directly impact their ability to effectively access ESCR. However, the United Nations has recognized the Chinese government's success in

---

[24] International Covenant on Economic, Social and Cultural Rights (ICESCR), December 16, 1996, G.A. Res. 2200A(XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), entered into force January 3, 1976, art 27, China ratification March 27, 2001.

[25] International Covenant on Civil and Political Rights (ICCPR), December 16, 1966, G.A. Res. 2200A (XXI), GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), entered into force March 23, 1976, art. 6.1.

[26] "Speech by Chinese Representative on Human Rights," Xinhua News Agency, March 2, 1994.

[27] Expert Group Meeting on Youth Development Indicators, United Nations Headquarters, "Indicators of Poverty and Hunger," December 12-14, 2005, http://www.un.org/esa/socdev/unyin/documents/ydiDavidGordon_poverty.pdf (accessed January 3, 2010). 117 countries which participated in the World Summit on Social Development in Copenhagen in 1995 agreed to a resolution which defined absolute poverty as "a condition defined by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services."

[28] "Wen says China will honor MDG commitments to reduce poverty," Xinhua News Agency, September 22, 2010.

[29] Ibid.

addressing subsistence and development rights through the criteria of the UN's Millennium Development Goals (MDGs).[30]

In September 2009, the United Nations and China's Ministry of Foreign Affairs issued a joint report, which was based mainly on Chinese government data, and which concluded that "most [MDG] targets have been met or exceeded seven years in advance. China is also on track to reduce maternal mortality, and control HIV and AIDS and tuberculosis, with good hopes for achieving the MDG targets by 2015."[31]

A review of improvements in key statistical indicators of public health in China supports the UN's assessment that the Chinese government has made significant progress over the past three decades in some aspects of the right to health. The average life expectancy of Chinese citizens has risen from 62 years of age in 1970 to 73 years of age in 2008.[32] China's under-five mortality rate, which measures the probability of a child's death between birth and exactly five years of age, has declined sharply over the past 30 years from 117 per 1,000 births in 1970 to 21 per 1,000 births in 2008.[33] These improvements likely reflect the impact of government initiatives in areas including sanitation and public health.

The Chinese government has also made measurable improvement over the past three decades in social welfare programs that underpin basic subsistence rights. In particular, the Chinese government has created social welfare programs designed to ease the impact on some of its citizens of the ongoing transition from a socialist planned economy to a more market-oriented economic model. One such initiative is unemployment insurance, which the government launched in 1986 as a means to protect workers laid off during a drastic overhaul of the state-owned industrial sector. The most recent official data indicates that government unemployment insurance extended to 124 million Chinese citizens at the end of

[30] The MDGs, eight specific objectives including the eradication of extreme hunger and poverty, achievement of universal primary education, promotion of gender equality and empowerment of women, reduction of child mortality, improvement in maternal health, combating HIV/AIDS, malaria and other diseases, ensuring environmental sustainability and developing a global partnership for development in the world's poorest countries by 2015, were adopted at a UN summit of world leaders in September 2000. "United National Millennium Development Goals," http://www.un.org/millenniumgoals/bkgd.shtml (accessed on August 14, 2010).

[31] United Nations System in China, *China's Progress Toward the Millennium Development Goals, 2008 Report*, September 25, 2009, (New York: United Nations Development Programme, 2009), http://www.un.org.cn/public/resource/bobb7b863d301be218a33ac8094b772a.pdf (accessed September 8, 2010).

[32] United Nations Children Fund, "China Statistics," http://www.unicef.org/infobycountry/china_statistics.html#67 (accessed on November 5, 2010).

[33] Ibid.

2008, an increase of 7.5 million people from 2007.[34] In August 2010, Ajay Chhibber, the United Nations assistant secretary-general and director of the UN Development Programmme's Regional Bureau for Asia and the Pacific, praised China as a "champion" in meeting MDG targets for poverty reduction.[35]

Despite those measurable advances, some statistical indicators suggest the Chinese government is having less success delivering other key economic, social, and cultural rights. The United Nations Development Programme's Human Development Report 2010 notes that some of China's human development indicators[36] have not kept pace with the country's "spectacular" economic growth over the past three decades.[37] Since 1970, China recorded the strongest economic growth of the 135 countries covered by the Human Development Report 2010, yet it is ranked 79th of those countries in improvements in education and health over the same period.[38] The report notes that "China is 1 of only 10 countries in the 135 country sample to have a lower gross [educational] enrollment ratio now than in the 1970s."[39]

The UNDP Human Development Report 2010 concludes that the Chinese central government's four-decade long decentralization of basic public services has hurt people's access to those services. That decentralization has involved the withdrawal of central government funding for basic public services, particularly health care, and obligating provincial governments to provide those services instead. An inadequate allocation of resources to ensure the continuation of basic public services has resulted in situations in which "public social services deteriorated and in some places even collapsed."[40] The report criticizes the Chinese government's "single-minded pursuit of economic growth" for creating environmental and economic conditions that have worsened Chinese citizens' quality of life.[41]

---

[34] National Bureau of Statistics of China, "Statistical Communique on Labor and Social Security Development in 2008," May 22, 2009, http://www.stats.gov.cn/english/newsandcomingevents/t20090522_402560900.htm (accessed November 5, 2010).

[35] "Interview: China regarded as model of achieving Millennium Development Goals," Xinhua News Agency, August 3, 2010.

[36] United Nations Development Programme (UNDP), *Human Development Report 2010*, (New York: United Nations Development Programme, 2010), p. 105, http://hdr.undp.org/en/media/HDR_2010_EN_Complete.pdf (accessed November 5, 2010).

[37] Ibid., p. 42.

[38] Ibid., p. 105.

[39] Ibid., p. 105.

[40] Ibid., p. 105.

[41] Ibid., p. 105, "escalating environmental pollution threatened many land, water and air systems that people depended on for their livelihoods, sometimes with global implications. Income equalities worsened. By 2008 per capita household consumption in the coastal region of Guangdong was more than four times that in Tibet."

In addition, strict controls on freedom of expression and association, as well as restrictions on media freedom, impair the ability of Chinese citizens to have adequate knowledge of their social and economic rights and limit their capacity to legally challenge government officials and security forces who might deny them such rights. These limitations also run counter to the Chinese government's own assertion in the NHRAP that "all kinds of human rights are interdependent and inseparable."[42]

[42] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_1.htm (accessed August 12, 2010), introduction, para.6.

II. Unmet NHRAP Objectives

The NHRAP's introduction specifically lists the International Covenant on Civil and Political Rights as one of the plan's "fundamental principles," and the plan includes a host of commitments that would advance such rights.[43] Since adoption of the plan, however, the Chinese government has failed to fulfill those commitments, all of which reiterate obligations already enshrined in the Constitution of the People's Republic of China and various international instruments. The NHRAP stipulates both a program of goals, and a two-year timeline for achieving them. Yet in the two-year NHRAP period, the government has in fact significantly rolled back key civil and political rights, thus enabling—rather than reducing—a host of human rights abuses.

The following section documents how the NHRAP's targeting of key civil and political rights for development and improved protection between 2009 and 2010 failed to translate into substantive government action on these issues. In some cases, key political rights prioritized in the NHRAP came under intensified attack by government officials, security forces, and their agents. Human Rights Watch selected for evaluation the NHRAP's performance with regard to these key civil and political rights due to their importance in protecting citizens from egregious physical harm and in allowing citizens to be accurately informed about issues of personal and national interest.

Rights of Detainees

The NHRAP pledged to protect the personal rights of Chinese citizens "in every process of law enforcement and judicial work," and "improve the laws, regulations, policies and measures related to the protection of detainees rights and humanitarian treatment."[44] There has been some official willingness to acknowledge the shortcomings of Chinese law enforcement. Zhou Yongkang, the chief of China's security forces, acknowledged in an August 2010 online media interview that Chinese police "sometimes are unfair while enforcing the law."[45]

A review of the government's performance in 2009-2010 reveals wide gaps between the goals of the NHRAP and the actual conduct of government officials and security forces in protecting Chinese citizens, including detainees, from rights abuses in the following areas:

[43] Ibid.

[44] Ibid.

[45] Michael Forsythe, Yidi Zhao, "Top China Law Enforcement Official Says Nation's Police Sometimes Unfair," Bloomberg News, August 12, 2010.

Torture

The NHRAP states:

> The state prohibits the extortion of confessions by torture. Evidence will be collected in accordance with the legally prescribed process. It is strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Anyone who coerces confessions out of a suspect by torture, corporal punishment, abuse or insult shall be handled in accordance with the seriousness of the acts and the consequences. If the case constitutes a crime, criminal responsibility shall be investigated in accordance with the law.[46]

The NHRAP states that the government will take effective measures "to prohibit such acts of corporal punishment, insult of detainees, or the extraction of confessions by torture."[47] Although this is a welcome statement of how the state should act to prevent and punish the crime of torture, it is not a description of how the state presently acts in practice. Torture in detention in China remains an endemic problem. After a 2005 visit, Manfred Nowak, the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the UN Office of the High Commissioner for Human Rights, concluded that torture was widespread.[48] Nowak reported that torture methods in China included "use of electric shock batons, cigarette burns, guard-instructed beatings by fellow prisoners, submersion in pits of water or sewage, exposure to extreme heat or cold, being forced to maintain uncomfortable positions, deprivation of sleep, food or water, and suspension from overhead fixtures by handcuffs."[49] Nowak's February 2010 follow-up report, to which the Chinese government declined to contribute, concludes that the Chinese government has failed to deliver on its NHRAP commitment to end torture of criminal suspects in custody.[50]

---

[46] *National Human Rights Action Plan of China (2009-2010),* http://news.xinhuanet.com/english/2009-04/13/content_11177126_10.htm (accessed August 12, 2010), chapter two, Guarantee of Civil and Political Rights, (1) Rights of the person, para. 1.

[47] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_11.htm (accessed August 12, 2010), chapter two,. Guarantee of Civil and Political Rights, (2) Rights of detainees, para. 5.

[48] "Torture, though on decline, remains widespread in China, UN expert reports," UN News Service, December 2, 2005, http://www.un.org/apps/news/story.asp?NewsID=16777&Cr=rights&Cr1=China (accessed August 17, 2010).

[49] Ibid.

[50] United Nations Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/13/29/Add.6, February 26, 2010, No. 19, p. 37. "The Special Rapporteur welcomes China's efforts to improve the situation of human rights in the country and to combat torture as proclaimed in its National Human Rights Action Plan 2009-2010 (NHRA). He positively notes that the NHRA unambiguously prohibits torture as well as the use of evidence obtained through torture and declares to prevent torture by inter alia establishing and improving

Chinese government efforts to address torture in detention during the period of the NHRAP have included the May 2010 joint issue of two directives, "The Assessment of Evidence in Death Penalty Cases" and "The Exclusion of Illegal Evidence in Criminal Cases," by the Supreme People's Court, the Supreme People's Procuratorate, and the Ministries of Public Security, State Security, and Justice.[51] The directives reiterate existing legal prohibitions on the use of torture by security forces to extract confessions. They also introduced procedural mechanisms to exclude from court any evidence tainted by torture, including confessions of defendants and testimonies of prosecution witnesses, which form the basis of most criminal convictions in China. [52] However, in at least one prominent case since the directives were issued, these prohibitions were not followed (see the Fan Qihang case below).

Over the past two years, China's state media has highlighted the problem of torture in a series of articles about "unnatural deaths" of detainees. On June 24, 2010, the *Zhejiang Daily* newspaper compiled a list of 15 such deaths from February 2009 to April 2010, for which official explanations ranged from "death by blind man's bluff" and "death by picking at acne" to "death by drinking water."[53] The article cited a former director general of the Detention Center Management Bureau of the Ministry of Public Security attributing the majority of such deaths to beatings by both security forces and fellow detainees.[54]

The Supreme People's Procuratorate concluded in April 2010 that of the 15 cases of unnatural detainee deaths in 12 provinces investigated by authorities up to that point in 2010, seven were the result of beatings while three remained under investigation.[55] In April 2010, the Beijing municipal prisons authority announced measures to prevent torture, including making wardens in the city's 14 prisons personally accountable for the death or injury of any detainees under their jurisdiction.[56] That same month, the government also announced that Beijing's 22 detention centers would be equipped with 24-hour surveillance cameras to "increase transparency and prevent abnormal deaths."[57] These were welcome developments.

---

supervisory mechanisms for law enforcement and for the administration of justice, conducting physical examinations of detainees before and after any interrogation and improving the treatment of detainees. However, the Special Rapporteur regrets that China fails to take concrete steps in this regard, rejects to release concrete data about enforcement efforts and to increase transparency in the criminal justice system."

[51] Ng Tze-wei, "Evidence guidelines ban torture in capital cases," *South China Morning Post*, May 31, 2010.

[52] Ibid.

[53] 朱海兵, "非正常死亡，亟待遏制," ("Urgently Awaiting the End of Unnatural Deaths in Detention Centers") *浙江日报报*, June 24, 2010, http://zjdaily.zjol.com.cn/html/2010-06/24/content_423806.htm?div=-1 (accessed on August 18, 2010).

[54] Ibid.

[55] Ibid.

[56] "Buck Stops with wardens for deaths in custody," *China Daily*, April 26, 2010.

[57] Ibid.

However, reports in the Chinese media indicate that torture has remained widespread and systemic in China throughout the NHRAP's 2009-2010 period. A May 13, 2010 editorial in the *China Daily* newspaper, the Chinese government's English-language mouthpiece, stated that, "Torture is still playing a role in extracting a confession from suspects in custody. To avoid this kind of inhuman behaviors, the police need to be policed."[58] Chen Youxi, a criminal defense lawyer in Zhejiang province with 15 years of experience, stated in a June 16, 2010 blog post titled "Torture in China: Fact or Fiction?" that "100 percent of Chinese criminal defense lawyers believe coercion of confession by torture is extremely serious in China."[59]

The number of reports in a tightly controlled state media is encouraging, and may suggest that official attitudes towards torture are beginning to acknowledge the severity of the problem. But meaningful indicators of changes in practice will entail the prosecution of torturers and the exclusion of evidence obtained through torture, among others.

Research by Human Rights Watch also provides evidence about the persistence of torture during the NHRAP period. Human Rights Watch has documented the use of torture to gain information and confessions from Tibetans detained over the past two years in the aftermath of protests which broke out in the Tibetan city of Lhasa and elsewhere on the Tibetan plateau in March 2008.[60] The Chinese Ministry of Foreign Affairs responded not by announcing an investigation into the allegations, but rather by accusing Human Rights Watch of "fabricating papers that are aimed to boost the morale of anti-China forces, misleading the general public and vilifying the Chinese government."[61]

The NHRAP provided the Chinese government an opportunity to close regulatory loopholes and clearly articulate prohibitions on the use of evidence obtained through torture from admission in court. The NHRAP lists only two specific mechanisms aimed to reduce torture, including imposition of a "physical separation between detainees and interrogators" and a "system of conducting a physical examination of detainees before and after an

---

[58] "Policing the Police," China Daily, May 13, 2010.

[59] 陈有西，刑讯在中国实事实还是谎言，陈有西律师，June 16, 2010, http://chenyouxilawyer.fyfz.cn/art/643223.htm (accessed August 18, 2010).

[60] Human Rights Watch, *I Saw It with My Own Eyes,* pp. 48-52. A number of former detainees and relatives of people arrested after March 2008 have alleged that security forces used torture to extract confessions and information from those arrested, including monks and women. Conditions were so severe that detainees required hospitalization and suffered permanent injuries. A few even died, either while in jail, or shortly after their release.

[61] Embassy of the People's Republic of China in the United States of America, "Spokesman of the Chinese Embassy in the U.S. Wang Baodong Makes a Statement regarding a Report on Tibet Related Issues Released by Human Rights Watch," July 22, 2010, http://www.china-embassy.org/eng/sghd/t719336.htm (accessed August 18, 2010), para. 3.

interrogation."[62] However, the NHRAP fails to address how and when such measures might be implemented, the agencies responsible for implementation, and mechanisms to evaluate the effectiveness of such measures.

To meaningfully address the problem of widespread torture by Chinese security forces, a revised NHRAP should call for:

1. Annual publication and review of statistics on the following:
   a) The number of judicial cases where courts have excluded evidence tainted by torture and the number of cases in which detainees have alleged torture in detention;
   b) The number of investigations of those cases and their results;
   c) The number of cases where administrative or legal action has been taken against officials accused of torture, so that the public can assess whether the relevant government agencies are taking effective action to provide accountability for this universally condemned crime.
2. Publication and dissemination of the summary of the findings and recommendations of Manfred Nowak, the former special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the UN Office of the High Commissioner for Human Rights, regarding widespread torture in China and the Chinese government's plans to put an end to it.
3. A commitment to invite the new special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the UN Office of the High Commissioner for Human Rights to China to follow up on Nowak's 2005 findings and recommendations.
4. The installation of closed-circuit television (CCTV) cameras in prisons and detention facilities nationwide to minimize the potential for torture of detainees by security forces; and the institution of legal requirements allowing lawyers immediate and unimpeded access to CCTV footage in cases of allegations of torture of suspects.
5. The adoption of a "Whistleblowers Law" which would allow suspects, detainees, and their lawyers to file complaints without fear of possible reprisals by perpetrators.

[62] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_11.htm (accessed August 12, 2010), chapter Two, Guarantee of Civil and Political Rights, (2) Rights of detainees, para. 5.

Illegal Detention

The NHRAP states:

> The State prohibits illegal detention by law enforcement personnel. Taking a criminal suspect in custody, changing the place of custody or extending the term of detention must be carried out in accordance with the law. Wrongful or prolonged detention shall be prevented. The State will improve the measures of providing economic detention,[63] legal remedies and rehabilitation to victims. Those who are responsible for illegal, wrongful or prolonged detention shall be subjected to inquiry and punished if found culpable.[64]

During the 2009-2010 period of the NHRAP, Human Rights Watch, the Chinese nongovernmental organization Chinese Human Rights Defenders, and Chinese human rights defenders and civil society activists documented severe and widespread abuses of detainee rights involving high-profile dissidents as well as tens of thousands of ordinary Chinese citizens. One of the most disturbing indications of the Chinese government's willingness to use arbitrary detention and enforced disappearance as a tool of political intimidation during the 2009-2010 period of the NHRAP is the plight of Gao Zhisheng, a lawyer who took on some of China's most controversial causes by defending coal miners and underground Christians. Gao was the victim of an enforced disappearance by security forces in February 2009. After more than a year of official denials regarding Gao's location and wellbeing, Gao reemerged at his Beijing apartment in early April 2010. Gao confirmed at that time that during the previous year he had been in detention, but vanished again days later, apparently back into official custody. Gao's location, health, and circumstances remain unknown.[65]
The Chinese government has responded to the award of the October 8, 2010 Nobel Peace Prize to Chinese writer and human rights activist Liu Xiaobo with a wave of administrative detentions.[66] China's police have legal powers to routinely impose administrative detention via "re-education through labor," or *laojiao*, and house arrest, or *ruanjin*. Re-education

---

[63] "Economic detention" is a mistranslation of "economic compensation" (经济赔偿) from the NHRAP's Chinese-language version. http://www.humanrights.cn/cn/dt/gnbb/t20090413_438873.htm (accessed on November 8, 2010).

[64] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_10.htm (accessed August 12, 2010), chapter two, Guarantee of Civil and Political Rights, (1) Rights of the person, para. 3.

[65] "China: End June 1989 Massacre Denial, Free Dissidents," Human Rights Watch news release, June 1, 2010, http://www.hrw.org/en/news/2010/06/01/china-end-june-1989-massacre-denial-free-dissidents.

[66] Law of the People's Republic of China on Administrative Penalty, adopted and promulgated on March 17, 1996. Article 16 states, "the power of administrative penalty involving restriction of freedom of person shall only be exercised by the public security organs." Article 34 states that "If a law-enforcing officer decides to impose administrative penalty on the spot, he shall show the party his identification papers for law enforcement, fill out an established and coded form of decision for administrative penalty. The form of decision for administrative penalty shall be given to the party on the spot."

through labor allows the police to unilaterally impose custodial sentences of up to three years while depriving detainees of any due process of law and judicial oversight.[67] House arrest, which police can impose completely arbitrarily and without judicial oversight, results in detention at home, with restricted and monitored internet and phone communications, and 24-hour surveillance by unidentified and often aggressive security forces.[68] The individuals targeted included Liu Xiaobo's wife, Liu Xia, and his friend and fellow dissident, Yu Jie. Both Liu Xia and Yu Jie remained under house arrest at the time of writing of this report.[69] Police in the southern city of Guangzhou have also reportedly arrested Guo Xianliang on "subversion" charges after he distributed leaflets about Liu Xiaobo.[70]

During the NHRAP period, Chinese security forces have also imposed house arrest on civil society activists and human rights defenders after the conclusion of their formal prison terms. They include Chen Guangcheng.[71] Chen was released from prison on September 9, but was immediately placed under house arrest along with his wife and children at their home in Shandong province, and is forbidden to have any visitors.[72] Shanghai-based human rights lawyer Zheng Enchong has been under house arrest since he completed his prison sentence in June 2006.[73]

Another serious violation of the NHRAP's commitment to prevent illegal detention is the detention of what The United Nations Joint Programme on HIV/AIDS (UNAIDS) estimated to be 500,000 suspected drug users who are held in mandatory drug detentions centers at any given time. Detainees can be held for up to six years under China's 2008 Anti-Drug Law without formal charge, trial, or means of appeal.[74] Such measures violate basic

---

[67] "China: Freedom of Thought, Conscience, Religion and Belief," Human Rights Watch news release, July 20, 2005, http://www.hrw.org/en/news/2005/07/20/freedom-thought-conscience-religion-and-belief.

[68] Brad Adams (Human Rights Watch), "Hard Facts on 'Soft Arrests' in China," commentary, *The Wall Street Journal Asia*, May 24, 2007, http://www.hrw.org/en/news/2007/05/24/hard-facts-soft-arrests-china.

[69] Tom Lassetter, "After Nobel prize to Liu, China's cracked down on dissent," McClatchy Newspapers, November 5, 2010.

[70] Ibid.

[71] Chen Guangcheng became one of China's best known human rights activists after he led a campaign to stop the authorities of Linyi city from forcing peasants to have abortions and submit to sterilization proceedings to meet population-control quotas. He was sentenced in December 2006 on trumped-up criminal counts of destroying property and organizing a mob to disrupt traffic.

[72] Edward Wong, "China: House arrest for rights lawyer," *New York Times*, November 4, 2010.

[73] Jerome A. Cohen and Yu-Jie Chen, "Prisoner in his own home," *South China Morning Post,* June 10, 2010.

[74] Human Rights Watch, *China – "Where Darkness knows No Limits" Incarceration, Ill-Treatment, and Forced Labor as Drug Rehabilitation in China*," ISBN: 1-56432-589-X, January 7, 2010, pp.7,13. In practice the law's ambiguous language gives local authorities wide scope to deal with suspected drug users as they see fit. Local police are empowered to detain people for the purpose of conducting compulsory urine tests without a reasonable suspicion of drug use. A person is sentenced under the law is permitted to appeal, but no process for appeals is articulated in the law, and multiple sources told Human Rights Watch that due process rights—such as to contest one's detention before a court and be represented by legal counsel—are routinely denied.

principles of international law,[75] as well as China's domestic laws regarding due process and treatment of detainees.

Human Rights Watch has also documented a widespread campaign of enforced disappearances[76] by security forces of dozens of ethnic Uighur men and boys during the NHRAP period which coincided with riots in Urumqi on July 5-7, 2009, many of whose whereabouts or reasons for detention are still unknown. Those enforced disappearances were perpetrated through unlawful, arbitrary arrests in the Uighur areas of the city of Urumqi in the aftermath of serious ethnic violence there on July 5, 2009.[77] Such abuses violate article 37 of the Constitution of the People's Republic of China.[78] China's Ministry of Foreign Affairs dismissed the report by alleging that HRW was rumor-mongering,[79] and more than a year later, the government has failed to account for hundreds of detainees taken into custody in the crackdown that followed the riots.

Similar tactics affect "petitioners," who are Chinese citizens, usually from the countryside, who come to Beijing and other cities seeking redress for complaints that lower levels of government have not resolved. In November 2009, Human Rights Watch released a report that documented an ongoing system of arbitrary arrests and enforced disappearances of petitioners in Beijing and other cities, where they are held in confinement in illegal secret detention facilities known as "black jails."[80] Some 32 of the 38 former black jail detainees interviewed by Human Rights Watch reported having been abducted by individuals whom they recognized as government

[75] The International Covenant on Civil and Political Rights (ICCPR), to which China is a signatory, provides that any person "deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." The UN Human Rights Committee, which monitors compliance with the ICCPR, has interpreted this provision to apply to "all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes immigration control, etc."

[76] The International Convention for the Protection of all Persons from Enforced Disappearances ("Disappearances" Convention) prohibits secret detention by government authorities and requires that enforced disappearances be investigated and prosecuted as a serious international crime; indeed, when "widespread and systematic" it constitutes a crime against humanity under the convention and the Rome Statute of the International Criminal Court. China has signed neither the Rome statute nor the "Disappearances" Convention, which has yet to enter into force.

[77] Human Rights Watch, *We Are Afraid to Even Look for Them.* Human Rights Watch documented enforced disappearances of at least 43 men and teenage boys which took place between July 6, 2009, and the beginning of August 2009. The actual number of the disappeared is likely significantly higher than the number of cases documented by HRW due to strict limitations on the ability to collect such information.

[78] Article 37 of the Constitution of the People's Republic of China stipulates that arrests must be conducted "with the approval or by decision of a people's procuratorate or by decision of a people's courts and arrests must be made by a public security organ."

[79] "China dismisses human rights report on Uyghur 'disappearances,'" Kyodo News, October 22, 2009.

[80] Human Rights Watch, *An Alleyway in Hell, pp.2-4.* "Black jails" are created and used primarily by local and provincial officials to detain petitioners who come to Beijing and provincial capitals seeking redress for complaints that are not resolved at lower levels of government. Government officials employ security forces and plainclothes thugs to abduct petitioners, often violently, and then detain them in black jails. Many black jail detainees are deprived of food, sleep, and medical care. Detainees are also subjected to often arbitrary physical and psychological abuse including beatings, sexual violence, theft, and intimidation. Duration of detention is arbitrary, varies from several hours to several months, and in some cases release hinges on payment of hefty fines.

officials and/or members of the security forces from their home provinces who provided no legal justification for detention or any information about the detainees' eventual destination or possible length of sentence.[81] Human Rights Watch research indicates that black jail detainees are often physically and psychologically abused by their captors.[82]

Ministry of Foreign Affairs spokesman Qin Gang responded to the Human Rights Watch report on black jails by asserting, "There are no black jails in China."[83] However, two weeks after the November 2009 release of the Human Rights Watch report on black jails, China's *Liaowang* magazine, published by the official Xinhua News Agency, published a detailed expose on black jails that confirmed and amplified the Human Rights Watch findings and urged the government to put an end to such abuses.[84] The spate of media attention did not make all officials willing to discuss the issue. In a meeting between Chinese government officials and foreign diplomats after the publication of the *Liaowang* article, the officials described the article as "inaccurate" and declined to discuss the topic of black jails.[85]

On January 19, 2010, the Chinese government issued a directive to provincial and county-level governments to submit within six months timetables for closing 582 Beijing-based liaison offices.[86] Human Rights Watch had identified these liaison offices, which in many cases are large, walled compounds including hotel and restaurant facilities, as the sites of black jail facilities run by local governments to detain petitioners from their respective areas.[87] However, as of June 2010, only about half of the provincial governments had submitted detailed plans and timetables for closure of their liaison offices.[88]

In September 2010, Chinese state media reported that Beijing police had arrested the chairman and general manager of a company called Anyuanding, alleged to have been involved in abducting and detaining citizens in black jails.[89] This was a positive step. However, at least one Chinese human rights lawyer noted that the targeting of just one firm

---

[81] Ibid., p. 21-22.

[82] Human Rights Watch, *An Alleyway in Hell,* pp.2-4.

[83] Keith Bradsher, "China is accused of abuses in secret jails," *The New York Times*, November 13, 2009.

[84] Tini Tran, "State magazine reports on black jails, raising hopes of government acknowledgment of problem," Associated Press, November 25, 2009.

[85] Human Rights Watch interview with a Beijing-based foreign diplomatic (name and interview location withheld), April 1, 2010.

[86] Raymond Li, "Provinces drag feet on closure of liaison offices," *South China Morning Post*, June 22, 2010.

[87] Human Rights Watch, *An Alleyway in Hell,* pp.2-4.

[88] Raymond Li, "Provinces drag feet on closure of liaison offices," *South China Morning Post*, June 22, 2010.

[89] "'Black jails' investigated for illegally holding petitioners," *China Daily,* September 27, 2010.

implicated in the operations of black jails highlighted the government's failure to address the role of local officials in perpetuating the black jails system.[90]

The aftermath of protests in Tibet and across the Tibetan plateau in March 2008 prompted the arrests of thousands of Tibetans "regardless of legal procedures; where the state provided no accountability as to the whereabouts of detainees," concluded a Human Rights Watch report released in July 2010.[91] Although Human Rights Watch's findings were based on interviews with 203 Tibetan refugees and temporary visitors outside China between March 2008 and April 2010, China's foreign ministry rejected its findings as a "fabrication."[92]

The NHRAP provided the Chinese government with an opportunity to close regulatory loopholes and clearly articulate mechanisms to prevent illegal detention and punish its perpetrators. However, the Chinese government failed to include any mechanisms in the document to meaningfully address the problem of illegal detention by government officials, security forces, and their agents. A revised NHRAP should call for the following:

1. An explicit commitment to stop the practice of enforced disappearances and transparent mechanisms to ensure that all arrests are carried out in accordance with both national and international law. To this end:
    a) Ensure that all persons detained by security forces are held at recognized places of detention, and that arresting officers identify themselves and present official identification;
    b) All places of detention should be required to maintain records regarding every detainee, including the date, time, and location of arrest, the name of the detainee, the reason for detention, and the specific unit or agency responsible for the detention. The records should be available to detainees' families, counsel, and other legitimately interested persons. All transfers of detainees should be reflected in the records;
    c) In accordance with international and national law, detainees should promptly be brought before a judge and informed of the reasons for arrest and any charges against them. The family should be informed promptly of the arrest and location

[90] Megan K. Stack, "'Black jails' stir outrage in China," *Los Angeles Times*, September 30, 2010.

[91] Human Rights Watch, *China – "I Saw It with My Own Eyes," Abuses by Chinese Security Forces in Tibet, 2008-2010,* ISBN: 1-56432-666-7, July 21, 2010, p. 53.

[92] Embassy of the People's Republic of China in the United States of America, "Spokesman of the Chinese Embassy in the U.S. Wang Baodong Makes a Statement regarding a Report on Tibet Related Issues Released by Human Rights Watch," July 22, 2010, http://www.china-embassy.org/eng/sghd/t719336.htm (accessed August 18, 2010), para. 3.

of the detainee. Any persons detained by the security forces must be allowed contact with family and unhindered access to legal counsel of their choice;

d) Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and enact national legislation that gives force to its provisions.

2. An explicit prohibition of the imposition of house arrest by Chinese police and the lifting of house arrest conditions on individuals including Liu Xia, Chen Guangcheng, and Zheng Enchong.
3. An explicit public admission of the existence of black jails and decisive measures to close them, set detainees at liberty, and punish jailers. A failure to do so will likely ensure that abuses will continue and those who operate the jails will continue to go unpunished.

Death Penalty

The NHRAP states:

> [The] Death Penalty shall be strictly controlled and prudently applied…. [T]he People's Procuratorate shall tighten its supervision over death penalty cases in accordance with the law.[93]

The death penalty is currently mandated for no fewer than 68 crimes, including embezzlement and corruption.[94] China's death penalty statistics remain classified as state secrets, allowing no transparency or independently verifiable review of the NHRAP's goal of ensuring that the death penalty is "strictly controlled and prudently applied."[95]

In August 2010, the Chinese government announced a draft amendment to China's criminal law which would eliminate the death penalty for a total of 13 "economy-related nonviolent offenses," including the smuggling of precious metals and cultural relics out of the country.[96] However, the government has provided no indication regarding if or when

---

[93] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_10.htm (accessed August 12, 2010), chapter one, Guarantee of Civil and Political Rights, (1) Rights of the person, para. 5.

[94] "China: Issue Moratorium on Executions Before Olympics," Human Rights Watch news release, October 8, 2007, http://www.hrw.org/en/news/2007/10/07/china-issue-moratorium-executions-olympics.

[95] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_10.htm (accessed August 12, 2010), chapter one, Guarantee of Civil and Political Rights, (1) Rights of the person, para. 5.

[96] "China mulls lessening number of crimes punishable by death," Xinhua News Agency, August 23, 2010.

the draft amendment might be approved, and, in September 2010, Chen Sixi, member of the National People's Congress (NPC) Standing Committee and vice chairman of the NPC's Committee for Internal and Judicial Affairs, announced that the government would not in fact pursue these reforms.[97]

The international human rights organization Amnesty International declined to publish an estimate of the total number of executions in China in 2009 due to concerns that, "Estimates based on the publicly available information grossly under represent the actual number the state killed or sentenced to death."[98] The organization does estimate that China executes more people each year than the rest of the world combined. The human rights organization Dui Hua estimates that the Chinese government currently executes fewer than 5,000 people annually, a decline from an estimated more than 10,000 ten years ago.[99]

Chinese state media reported in September 2010 that since the Supreme People's Court (SPC) regained the authority to vet such cases in 2007, it had rejected the death penalty in 15 percent of the cases it reviewed in 2007 and in 10 percent of cases in 2008.[100] However, Manfred Nowak, the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the UN Office of the High Commissioner for Human Rights, has described the Supreme People's Court death penalty review process as "just a rubber stamp" and "not a substantive review" of the actual cases.[101] That view is supported by the refusal of the Supreme People's Court to consider the role of torture in handing down a death sentence to Chongqing entrepreneur Fan Qihang, a politically sensitive case due to its connection with a controversial anti-crime campaign launched in June 2009 by the city's communist party chief Bo Xilai. The court's failure to consider evidence of torture in Fan's case raises serious doubts about the willingness of the Supreme People's Court to consider mitigating evidence in politically sensitive cases.

> Fan wrote to the top court describing how he was tortured until he confessed, and a group of lawyers, scholars and writers published an open letter asking the court to investigate allegations of torture in Chongqing. So all eyes were

---

[97] "China not to drop death penalty for corruption crimes," Xinhua News Agency, September 29, 2010.

[98] "Death penalty report: China must end secrecy surrounding sentences and executions," Amnesty International press release, March 30, 2010, http://www.amnesty.org/en/news-and-updates/report/death-penalty-report-china-must-end-secrecy-surrounding-sentences-and-execut (accessed August 19, 2010).

[99] John Kamm, "Has Mercy Come to China?" commentary, *The Washington Post*, August 16, 2010.

[100] Wang Jingqiong, "Appeals are ensured for death cases," *China Daily*, September 2, 2010.

[101] Human Rights Watch interview Manfred Nowak, the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the UN Office of the High Commissioner for Human Rights, New York, October 29, 2010.

> on the Supreme People's Court to see what difference, if any, the new regulations would make in practice. The answer came Sept. 26 when Mr. Fan was executed.[102]

The NHRAP offered the Chinese government an opportunity to clearly articulate transparent mechanisms to regulate and reduce the use of the death penalty. However, the government failed to insert any such mechanisms into the document to meaningfully address the opaque and unpredictable system by which the death penalty is imposed in China. A revised NHRAP should call for the following:

1. A precise timetable for the annual release of regularly updated death penalty statistics including the numbers of persons executed and the crimes for which they were executed;
2. An explicit commitment to eliminating the death penalty;
3. An invitation to the special rapporteur on extrajudicial, summary or arbitrary executions of the United Nations High Commission for Human Rights to evaluate capital punishment procedures to ensure that suspects' rights are protected and abuses of the death penalty do not occur.

The Right to Fair Trial

The NHRAP states:

> The state, in accordance with the law, guarantees the rights of litigants, especially those charged with criminal offences, to an impartial trial.[103]

However, the Chinese judiciary is highly politicized, and the government has long prioritized the interests of the ruling Chinese Communist Party over rule of law in judicial proceedings. President Hu Jintao summarized this dynamic in December 2007 by promulgating the idea of the "Three Supremes" which explicitly directs China's judiciary to rank "the constitution and laws" of China behind the "Party's cause [and] the people's interest."[104] The NHRAP makes no attempt to address or change that reality.

---

[102] Frank Ching, "In China, a tortuous road to the rule of law," *Globe and Mail*, October 6, 2010.

[103] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_12.htm (accessed August 12, 2010), chapter two,Guarantee of Civil and Political Rights, (3) The Right to a fair trial para. 1.

[104] Jerome Cohen, "Body Blow for the Judiciary," commentary, *South China Morning Post*," October 18, 2008.

China's key legal institutions are subject to the authority of the Party's political and legal committees at every level.[105] That authority often results in interference by police and prosecutors in the ability of lawyers to effectively represent their clients, particularly in cases considered politically sensitive.[106] Chinese human rights activist Teng Biao, a Chinese human rights lawyer whose social activism cost him his license to practice law in May 2008 and his teaching position at the Law College of Beijing University, in January 2009, criticized the NHRAP for failing to address the Chinese judiciary's lack of independence from political influence.[107] As a result, Chinese lawyers "often face violence, intimidation, threats, surveillance, harassment, arbitrary detention, prosecution, and suspension or disbarment from practicing law or pursuing their profession."[108] Chinese legal scholar He Weifang has said that up to 50 percent of China's judges lack formal legal training, which may encourage them to rely on guidance from their political superiors rather than legal principles as they reach judgments.[109]

Manfred Nowak, the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the UN Office of the High Commissioner for Human Rights, concluded in a February, 2010 follow-up report to his 1995 visit to China that the government has failed to deliver on legal guarantees to fair trial.[110] Nowak noted that "China has so far failed to take concrete steps to guarantee the right to legal counsel, the presumption of innocence and the right to remain silent."[111] Meanwhile, Chinese legal scholar He Weifang attributes the influence of local governments in pressuring courts to make pro-government judgments as a critical handicap to rule of law in China.[112] The net effect, according to He, is that in some cases courts "have been reduced to a proxy of local governments."[113]

---

[105] Human Rights Watch, "*Walking on Thin Ice – Control, Intimidation and Harassment of Lawyers in China,*" ISBN: 1-56432-311-0, April 28, 2008, http://www.hrw.org/en/reports/2008/04/28/walking-thin-ice, p.20.

[106] Ibid, p.3.

[107] Zhu Zhe, "Action Plan to Protect Detainees," *China* Daily, April 14, 2009.

[108] Ibid.

[109] Al Guo, "Half of Judges Lack Legal Training," *South China Morning Post*, July 21, 1999.

[110] United Nations Human Rights Council, Report of Manfred Nowak, the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in the UN Office of the High Commissioner for Human Rights, A/HRC/13/29/Add.6, February 26, 2010, p. 37, No. 21.

[111] Ibid.

[112] "Judicial Independence Should Come First," *Beijing Review*, November 15, 2005, http://www.chinadaily.com.cn/english/doc/2005-11/15/content_494790.htm (accessed November 6, 2010).

[113] Ibid.

Other institutional impediments to the right to a fair trial include a tradition by Chinese security forces of forcing confessions from suspects.[114] The case of Karma Samdrup highlights the reliance of Chinese security officers on forced confessions. Samdrup, a prominent Tibetan environmental philanthropist, was sentenced by a Xinjiang court on June 24, 2010, to a 15-year prison sentence on apparently trumped-up charges of grave-robbing.[115] Samdrup told a court in the city of Yanqi in the Xinjiang Autonomous Zone on June 22, 2010, that during several months of interrogation, officers repeatedly beat him, ordered fellow detainees to beat him, deprived him of sleep for days on end, and drugged him with a substance that made his eyes and ears bleed—all to extract a confession.[116]

Human Rights Watch has documented numerous unfair trials of high-profile civil society activists and dissidents during the NHRAP period, including those of veteran dissident Huang Qi, leading intellectual Liu Xiaobo, and literary editor and environmentalist Tan Zuoren.[117] The trial, conviction, and subsequent execution on December 29, 2009 of United Kingdom citizen Akmal Shaikh, despite convincing evidence that Shaikh was legally eligible for clemency on mental competency grounds, highlighted the vulnerability of foreign citizens to unfair trial procedures in China.[118]

Human Rights Watch has also documented the denial of due legal process and fair trials to suspects arrested in the aftermath of protests in Lhasa and the Tibetan Plateau in March

---

[114] Human Rights Watch, *I Saw It with My Own Eyes,* p. 12. A 2003 investigation by the Supreme People's Procuratorate (SPP, the State prosecution) uncovered official abuses, including torture, which had resulted in 460 deaths and serious injuries to 117 people throughout China.

[115] Verna Yu, "Prominent Tibetan antique dealer gets 15-year jail term," *South China Morning Post*, June 25, 2010.

[116] "China: Investigate Allegations of Torture in Tibetan Philanthropist's Trial," Human Rights Watch news release, June 23, 2010, http://www.hrw.org/en/news/2010/06/23/china-investigate-torture-allegations-tibet-philanthropist-trial.

[117] "China: Sham Trial of Veteran Human Rights Activist," Human Rights Watch news release, November 23, 2009, http://www.hrw.org/en/news/2009/11/23/china-sham-trial-veteran-human-rights-activist. A court in Chengdu in Sichuan province on November 23, 2009 sentenced Huang to three years imprisonment for "possession of state secrets" without any public disclosure of the evidence against him or what secrets he had allegedly possessed following his investigation of the collapse of schools in Sichuan's earthquake zone; "China: Writers, Scholars Press for Liu Xiaobo's Release," Human Rights Watch news release, March 9, 2010, http://www.hrw.org/en/news/2010/03/09/china-scholars-writers-press-liu-xiaobo-s-release. Liu, a long-time critic of the government, was sentenced in December 2009 to 11 years in prison for his publication of six political essays and for his role in the drafting of Charter 08, a petition calling for the rule of law and respect for human rights in China. Liu's conviction defied the Chinese constitution's formal guarantees of "freedom of speech, of the press, of assembly, of association, of procession and of demonstration"; Sky Canaves, "China sentences earthquake activist," *The Wall Street Journal*, February 10, 2010. Tan's conviction and five-year prison term on charges of "incitement to subvert state power" related to his compilation of a list of children killed in the Sichuan earthquake and to his alleged efforts to organize a public commemoration of the 20th anniversary of the June 1989 killing of unarmed civilians in Beijing and other cities, an officially taboo topic in China. "Incitement to subvert state power" is a charge at odds with freedom of expression as protected under international law because it criminalizes peaceful dissent.

[118] "EU/China: Ashton Should Raise Human Rights in China," Human Rights Watch news release, April 27, 2010, http://www.hrw.org/en/news/2010/04/27/euchina-ashton-should-raise-human-rights-china.

2008,[119] and following ethnic violence in the city of Urumqi in Xinjiang on July 5, 2009.[120] Research by Human Rights Watch indicates that between March 2008 and June 2010 in Tibet and neighboring regions, "thousands of protesters and ordinary Tibetans were arrested and detained regardless of legal procedures … where a politicized judiciary controlled by party authorities, conducted proceedings in which defendants had virtually no due process."[121] Likewise in Xinjiang, Human Rights Watch has evidence that the October 2009 trials of suspects arrested in relation to the Urumqi violence were characterized by "serious violations of due process that compromised the possibility of fair trials for the defendants, including restrictions on legal representation, overt politicization of the judiciary, failure to publish public notification of the trials, and failure to hold genuinely open trials as mandated by law—all chronic problems in China's judicial system."[122]

The NHRAP gave the Chinese government an opportunity to clearly articulate mechanisms to prevent political influence on China's legal system in order to protect the right to a fair trial. However, the Chinese government failed to list any means to meaningfully address the problems of the politicization of China's judicial system and the lack of protection for the rights of lawyers and criminal suspects. A revised NHRAP should call for the following:

1. Explicit renunciation of "The Three Supremes" doctrine propagated by President Hu Jintao and public reaffirmation of the rule of law and the need for an independent judiciary;
2. Explicit commitment to support the independence of China's legal profession by ensuring that bar associations are fully independent, self-governing, and capable of representing the interests of China's legal profession.

The Rights to Information, Redress, and Expression

The NHRAP claims:

> The Chinese government will make more efforts to keep the public informed of government affairs and improve relevant laws and regulations, so as to

[119] Human Rights Watch, *I Saw It with My Own Eyes,* pp.53-58.

[120] Human Rights Watch, *We Are Afraid to Even Look for Them*, pp.18-20.

[121] Human Rights Watch, *I Saw It with My Own Eyes,* p.53.

[122] "China: Xinjiang Trials Deny Justice," October 15, 2009, Human Rights Watch news release, http://www.hrw.org/en/news/2009/10/15/china-xinjiang-trials-deny-justice.

guarantee citizen's right of information.[123] The state will take effective measures to develop the press and publications industry and ensure that all channels are unblocked to guarantee citizens' right to be heard [and] institutional guarantees for the legitimate rights of news agencies and journalists will be strengthened.[124]

Media Censorship

The NHRAP's commitments to strengthening the right to be heard and to be informed are laudable on paper, but are fundamentally incompatible with the government's pervasive state censorship system. China's domestic media, which is completely state-owned, has for decades and throughout the 2009-2010 period of the NHRAP been subject to strict government controls that ensure all reporting falls within the boundaries of the official propaganda line.[125] Chinese journalists must heed the state censors' determination of taboo ("sensitive," or min-gan (敏感)) topics[126] that cannot be covered in the media, or else face sanctions ranging from physical abuse to job loss.[127] The international nongovernmental media freedom organization the Committee to Protect Journalists estimates that China jails more journalists than any other country in the world, with a total of 24 reporters in prison as of December 2009. The charges, including "subversion," and "spreading rumors," are often dangerously ambiguous.[128]

Restricted topics fall under the dangerously vague rubric of issues affecting what the Chinese government defines as "social stability," and include references to unrest in Tibet and Xinjiang, and coverage of Taiwan and prominent dissidents.[129] In a September 24, 2010 media interview with Taiwan's *Want Daily*, Chang Ping, an outspoken reform-minded

---

[123] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_14.htm (accessed August 12, 2010), chapter two, Guarantee of Civil and Political Rights, (5) The right to be informed, para. 1.

[124] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_16.htm (accessed August 12, 2010), chapter two, Guarantee of Civil and Political Rights, (7) The Right to be heard, para. 1-2.

[125] Human Rights Watch, *China – "China's Forbidden Zones," Shutting the Media out of Tibet and Other "Sensitive" Stories,* ISBN: 1-56432-357-9, July 6, 2008, http://www.hrw.org/en/reports/2008/07/06/china-s-forbidden-zones, p. 9.

[126] Ibid., pp. 9-10. "Sensitive" or taboo topics include any subject deemed to be a threat to the "social stability" goals of the Chinese government and can range from unflattering depictions of the ruling Chinese Communist Party to timely and accurate information on natural disasters or public health emergencies.

[127] Ibid., pp. 9-11.

[128] Committee to Protect Journalists, "2009 Prison Sentence: 136 journalists jailed worldwide," December 1, 2009, http://www.cpj.org/imprisoned/2009.php (accessed September 3, 2010).

[129] Human Rights Watch, *China – "China's Forbidden Zones,"* p. 27.

journalist with the Guangdong's *Southern Daily* newspaper, described how the internet revolution and the migration of news to internet platforms have boosted the capacity of China's censors to purge news stories that deviate from the official line.[130]

> Media control is now more concrete and more focused than it once was. A decade ago, during the Jiang Zemin era, the authorities lacked robust technical controls on the Internet side, so print media would often receive orders [from propaganda authorities] saying things like: "Do not re-print such-and-such information from the web, or such-and-such information is rumor." These days, we don't often see bans of this kind. Rather, it's the Internet [sites] receiving bans like, "Do not re-post news from Southern Metropolis Daily." This is because web controls have now become more systematized (有序了) and effective. If there is something problematic at a website, it can now be deleted directly.[131]

In October 2008, the Chinese government made permanent media freedoms for foreign correspondents; these had been temporarily introduced around the Beijing Olympics. Institutionalizing these regulations lifted restrictions that included correspondents' requiring rarely-granted official permission to travel the country and interview Chinese citizens.[132] However, Chinese law continues to deny Chinese citizens the right to work as journalists for foreign media organizations and a new "Code of Conduct" implemented in February 2009 for local news assistants of foreign journalists has been criticized by the Foreign Correspondents Club of China as an impediment to reporting.[133] The Code of Conduct states that news assistants face possible dismissal, loss of contracts, and revocation of accreditation if they undertake any "independent reporting" for their employers. Foreign correspondents told Human Rights Watch that the Chinese government has not provided any clarification on its criteria for "independent reporting," which include functions often performed by news assistants such as contacting government departments for confirmation or clarifications of official statements and requests for government data. Additionally, the Code of Conduct

---

[130] 转：长平专访——大陆媒体：新的裂缝，新的光亮，*旺薄*， 噢次 ("Interview: Chang Ping – Mainland media: New cracks, new brightness," ***Want Daily***,) September 24, 2010, http://www.changp.com/2010/10/823.htm (accessed November 10 2010).

[131] Ibid.

[132] "China: Extend New Media Rules to Chinese Reporters," Human Rights Watch news release, October 22, 2008, http://www.hrw.org/en/news/2008/10/28/china-extend-new-media-rules-chinese-reporters.

[133] "Government Should Stop Intimidating Assistants Of Foreign Media," Foreign Correspondents' Club of China, press statement, March 6, 2009, http://www.fccchina.org/2009/03/06/government-should-stop-intimidating-assistants/ (December 23, 2010).

requires news assistants to "limit themselves to assisting with reporting" and to "propagate positive information and ideas ... [about] China's history, culture and reforms."[134]

Chinese journalists who report on "sensitive" topics continue to be the target of violence by government officials, security forces, and their agents.[135] On April 10, 2010, a group of 10 unidentified thugs in camouflage outfits attacked *Beijing News* reporter Yang Jie while he was taking photos at a forced demolition site. Yang suffered facial cuts, bruises, and a smashed mobile phone. Police at the scene briefly detained Yang's assailants before releasing them on the justification that their actions were a "misunderstanding."[136]On July 29, an unidentified man repeatedly punched *China Times* reporter Chen Xiaoying in the head in what appeared to be a reprisal for Chen's reporting on an alleged sex scandal at a Shenzhen-based corporation. There have been no arrests related to that assault.[137]

In 2009 and 2010, the NHRAP's goals were further compromised by the following developments:

- **February 6, 2009:** The Chinese government implemented a requirement for Hong Kong and Macau reporters to apply to central government liaison offices for a temporary press card prior to every reporting trip they make to mainland China. The Hong Kong Journalists Association has expressed concern about the impact of the new reporting permit system on media freedom and on Hong Kong and Macau media's ability to respond quickly to breaking news stories on the mainland.[138]
- **February 13, 2009:** Li Dongdong, deputy director of China's General Administration of Press and Publication, announced a government "blacklist" (Chinese: 黑名单) of Chinese journalists deemed to have engaged in "illegal reporting." Li said that journalists placed on the blacklist would be subject to penalties including a revocation of their accreditation and restrictions on their employment in the media industry. Li did not specify the government's definition of

[134] Ibid.

[135] Phelim Kine (Human Rights Watch), "China's Journalists Under Threat," commentary, *Washington Times*, September 2, 2010, http://www.hrw.org/en/news/2010/09/02/chinas-journalists-under-threat.

[136] 甘浩, (Hao Gan) "记者采访强拆遭拳打受伤"("Journalist beaten at demolition site"), 新京报 (Beijing News), April 21, 2010, http://epaper.bjnews.com.cn/html/2010-04/21/content_90698.htm?div=-1# (accessed December 23, 2010)

[137] Cheng Yingqi, "ACJA Calls for Better Protection for Reporters," *China Daily*, August 9, 2010.

[138] "HKJA urges to cancel the Measures on the Reporting Activities of HK & Macau Journalists in Mainland," Hong Kong Journalists' Association press statement, February 6, 2009, http://www.hkja.org.hk/site/portal/Site.aspx?id=A1-765&lang=en-US (accessed January 4, 2011).

"illegal reporting"[139] or articulate a process by which such allegations and blacklisting could be appealed. As a result, Chinese journalists are now at even greater risk of official reprisals if they carry out independent reporting on subjects the government deems sensitive.[140]

- May 2009: The Guangdong provincial government demanded—in the name of "harmony," "stability," and "national interests above all"—that state media outlets reduce "negative" coverage of issues ranging from government officials to public protests.[141] The taking of such a policy decision in the wake of public health and safety scandals that were intensified and prolonged by censorship[142] bodes ill for the development of free and independent media.
- March 2010: Zhang Hong, a deputy editor with the *Economic Observer* newspaper, lost his job within days of the publication of a March 1, 2010 editorial he coauthored that 13 Chinese newspapers carried. His editorial called for the abolition of the discriminatory household registration system. Two months later, *China Economic Times* editor Bao Yuehang was fired in apparent retaliation for a March 17, 2010 story that exposed tainted vaccines in Shanxi province linked to the deaths of four children and the sickening of at least 74 others.[143]
- April 2010: Shanghai authorities refused to respond to multiple applications by Hong Kong's *Apple Daily* newspaper, which is often critical of the Chinese government, for media accreditation to cover the Shanghai Expo, which ran from May 1, 2010, to October 31, 2010. That refusal symbolized "a retreat in terms of press freedom because the *Apple Daily* did get a permit to cover the 2008 Beijing Olympics," HKJA chairperson Mak Yin-ting told Human Rights Watch.[144]
- July 23, 2010: On July 23, Gheyret Niyaz, a Uighur journalist and the editor of a popular website called *Uighurbiz,* received a 15-year prison sentence on charges of

---

[139] False news reports and individuals who impersonate journalists are a legitimate, widespread problem in China. Inadequate training in journalistic ethics and a national media that has traditionally served as a tool of the Chinese Communist Party, rather than as a purveyor of objective news and analysis, have fostered an institutional culture prone to producing false news reports. In that context, the credibility of the Chinese government's assessment of "illegal reporting" is highly problematic because the government has not issued clear and concise criteria which define Illegal reporting, making journalists vulnerable to official reprisals for merely reporting issues which the government would prefer to remain covered up.

[140] Ibid.

[141] "China: Media Summit Participants Should Push For Press Freedom," Human Rights Watch news release, October 7, 2009, http://www.hrw.org/en/news/2009/10/07/china-media-summit-participants-should-push-press-freedom.

[142] Phelim Kine (Human Rights Watch), "China's Public Health Whitewash," commentary, *The Guardian,* June 23, 2010, http://www.hrw.org/en/news/2010/06/23/chinas-public-health-whitewash-0.

[143] Phelim Kine (Human Rights Watch), "China's Journalists Under Threat," commentary, *Washington Times*, September 2, 2010, http://www.hrw.org/en/news/2010/09/02/chinas-journalists-under-threat.

[144] "China: Shanghai Expo Stifles Media, Critics," Human Rights Watch news release, April 29, 2010, http://www.hrw.org/en/news/2010/04/29/china-shanghai-expo-stifles-media-critics.

"endangering state security" after he gave an interview to foreign media outlets after the July 2009 ethnic violence in Xinjiang.[145]

Denial of the Rights of Petitioners

The NHRAP states that mechanisms to allow petitioners, generally from rural areas,[146] to file complaints in provincial capitals and in Beijing "will be broadened and remain unblocked."[147] However, Human Rights Watch has documented the systematic denial of those rights though incarceration of petitioners in secret, illegal detention facilities known as "black jails"[148] throughout the 2009-2010 NHRAP period. Chinese rights activists estimate that thousands of petitioners are ensnared annually in black jails in Beijing alone.[149] The dangers faced by petitioners in trying to access their right to be heard was highlighted by the June 23, 2010 attack on a senior law enforcement official's wife in Hubei province by plainclothes police officers "who mistook her for a petitioner."[150]

Internet Controls

During the 2009-2010 NHRAP period, the Chinese government intensified its already tight control of internet content.[151] Yu Jianrong, the chairman of the Social Issues Research Center of the Rural Development Institute of the China Academy of Social Sciences, said in a December 26, 2009 speech to the Beijing Law Association that the Chinese government was determined to ensure that the internet in China serve the government's purposes and not become a forum for free expression:

---

[145] Phelim Kine (Human Rights Watch), "China's Journalists Under Threat," commentary, *The Washington Times*, September 2 , 2010.

[146] Human Rights Watch, *An Alleyway in Hell*, p.3. Petitioners are citizens from rural areas who come to Beijing and provincial capitals seeking redress for abuses ranging from illegal land grabs and corruption to police torture. China's "letters and visits," or petitioning, system is a modern version of an imperial tradition which legally permits Chinese citizens to report local official abuses or local legal decisions to higher levels of government. Because local courts regularly refuse to accept cases against local officials, and because pursuing legal redress through the court system can be prohibitively expensive, particularly for rural Chinese, petitioning has become one of the only accessible means of legal redress.

[147] *National Human Rights Action Plan of China (2009-2010)*, April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_16.htm (accessed August 12, 2010), chapter two, Guarantee of Civil and Political Rights, (7) The right to be heard, para. 6.

[148] Human Rights Watch, *An Alleyway in Hell.*

[149] Ibid., p. 2.

[150] Zhao Lei, "Ruckus Over the Beating of a 'Petitioner,'" *China Daily*, July 21, 2010.

[151] Human Rights Watch, "*Race to the Bottom" Corporate Complicity in China's Internet Censorship* (New York: Human Rights Watch, 2006), http://www.hrw.org/en/node/11259/section/3. "China's system of Internet censorship and surveillance is the most advanced in the world. While tens of thousands of people are employed by the Chinese government and security organs to implement a system of political censorship, this system is also aided by extensive corporate and private sector cooperation—including by some of the world's major international technology and Internet companies. In China, the active role of censor has been extended from government offices into private companies. Some companies not only respond to instructions and pressures from Chinese authorities to censor their materials, they actively engage in self-censorship by using their technology to predict and then censor the material they believe the Chinese government wants them to censor."

> Do we have an open media? No. Don't think that the Internet of today [was meant to] provide us with a space [for free expression]. The reason we have the Internet is because [the government] didn't have a choice. If they did, they would hope that we couldn't even have the Internet.[152]

Following ethnic violence in Xinjiang in early July 2009, all internet communications and mobile phone services there were shut down from July 5, 2009 to December 29, 2010.[153] The government justified its actions as a means to "prevent violence from spreading to other places,"[154] but it became what the nongovernmental media freedom organization Reporters Without Borders has termed the "longest-ever case of government censorship of this kind."[155] Although the authorities have reconnected Xinjiang to dozens of government websites since the end of December 2009, the government continues to impose official blocks on popular Uighur-language news and discussion portals.[156]

An official white paper on internet policy issued on June 8, 2010, states that "Chinese citizens fully enjoy freedom of speech on the Internet … [and] With their right to freedom of speech on the Internet protected by the law, they can voice their opinions in various ways on the Internet."[157] In an April 29, 2010 address to the Standing Committee of the National People's Congress, China's parliament, Wang Chen, the minister in charge of the State Council's Information Office, credited government controls with creating a "positive public opinion [that] surged with great momentum online, creating a favorable public opinion environment there."[158] Yet the Chinese government imposes harsh penalties for publishing online content it perceives as incompatible with its internet propaganda goals. For example, in July 2009, a Xinjiang court convicted three Uighur bloggers on the charge of "endangering state security," one of China's numerous dangerously ambiguous laws used to silence

---

[152] "Yu Jianrong: Maintaining a Baseline of Social Stability, (Part 8)" Translation of a speech to the Beijing Lawyers Association, December 26, 2009, http://chinadigitaltimes.net/2010/03/yu-jianrong-%E4%BA%8E%E5%BB%BA%E5%B5%98-maintaining-a-baseline-of-social-stability-part-8/ (accessed November 7, 2010).

[153] "Internet in Xinjiang Resumes," *Straits Times*, December 29, 2010, http://www.straitstimes.com/BreakingNews/Asia/Story/STIStory_471543.html (accessed November 7, 2010).

[154] "Official: Internet cut in Xinjiang to prevent riot from spreading," Xinhua News Agency, July 7, 2010.

[155] "Open Letter to the Xinjiang Party Secretary," Reporters Without Borders press release, May 19, 2010, http://en.rsf.org/china-open-letter-to-the-xinjiang-s-20-05-2010,37527.html (accessed September 8, 2010).

[156] Marriane Barriaux, "China's Uighurs face web blocks one year after riots," Agency France Presse, July 5, 2010.

[157] *The Internet in China*, June 8, 2010, s.v. "Section III: Guaranteeing Citizen's Freedom of Speech on the Internet," http://www.china.org.cn/government/whitepaper/node_7093508.htm (accessed September 1, 2010).

[158] Human Rights In China, "China Rights Forum: 'China's Internet': Staking Digital Ground," ISSN: 1068-4166, http://www.hrichina.org/public/contents/category?cid=175033 (September 1, 2010), p. 22.

dissent.[159] The three, Dilshat Perhat, webmaster of Diyarim; Nureli, webmaster of Salkin; and Nijat Azat, webmaster of Shabnam; received sentences of five years, three years, and ten years, respectively, on allegations that they had failed to quickly delete content posted to their websites about hardships in Xinjiang and, in one case, for allowing individuals to post messages about protests in Urumqi on July 5, 2010, which subsequently turned violent.[160]

In June 2009, the government attempted to require computer manufacturers and importers to install Green Dam Youth Escort software on all personal computers for the Chinese market. The government defended Green Dam as a tool to block pornography, but analysts and technical experts in China and abroad said the software was also programmed to censor content ranging from political information to websites catering to the needs of China's lesbian, gay, bisexual, and transgender community.[161] The Chinese government withdrew its demand for the installation of Green Dam software on June 30, 2009, after weeks of scathing criticism from some of China's nearly 300 million netizens, unprecedented opposition by foreign computer manufacturers and international business associations, and a threat from both the United States trade representative and the US secretary of commerce that Green Dam might prompt a World Trade Organization challenge.[162]

The NHRAP provided the Chinese government with an opportunity to clearly articulate mechanisms to eliminate illegal restrictions on Chinese citizens' right to be informed and right to be heard. However, the NHRAP fails to list any measures to do so. A revised NHRAP should call for the following:

1. An end to all pre-publication censorship absent a genuine emergency, such as a concrete and imminent threat to national security;
2. The abolition of legal ambiguities that threaten the freedom of Chinese journalists embodied in criminal charges, such as "revealing state secrets" and "inciting subversion";
3. Upholding Chinese journalists' right to travel and interview consenting individuals in line with both the media freedom guarantee in article 35 of China's constitution, and regulations governing the legal rights of foreign correspondents in China;

---

[159] Phelim Kine (Human Rights Watch), "China's Journalists Under Threat," commentary, *Washington Times*, September 2, 2010.

[160] Andrew Jacobs, "China Imprisons 3 Men Who Maintained Uighur Web Sites," *New York Times*, July 31, 2010.

[161] "China: Filtering Software Challenges Computer Industry," Human Right Watch news release, July 19, 2009, http://www.hrw.org/en/news/2009/06/19/china-filtering-software-challenges-computer-industry.

[162] Phelim Kine (Human Rights Watch), "Leaning on the Dragon," commentary, *Financial Times*, July 6, 2009. http://www.hrw.org/en/news/2009/07/06/leaning-dragon.

4. A national public education campaign about the legal rights of petitioners and the criminality of efforts to abduct, detain, and abuse them in black jails;
5. An end to all arbitrary censorship of "sensitive" terms and discussions on Chinese internet search engines and websites.

Right to Health

The NHRAP states:

> The basic framework for a basic medical and health system covering the entire nation will be established so as to make China among the countries providing national basic health service[163] [and] promoting equality in right to basic health care.[164]

The Chinese government in January 2009 announced an ambitious $125 billion dollar health reform program designed to establish a national medical insurance program to cover the basic medical needs of 90 percent of China's 1.3 billion people by the end of 2011.[165] By September 2010, government data indicated that the reform program had already resulted in $10 billion in government spending to cover 60 percent of the medical expenses of 833 million people.[166]

The Chinese government also took two important steps to protect the rights of people with HIV-AIDS during the NHRAP's 2009-2010 period. In April 2010, the government lifted a two-decade-long entry ban on HIV-positive foreign visitors.[167] Then on August 30, 2010, an Anhui provincial court accepted China's first-ever job discrimination lawsuit filed by a teacher alleging wrongful dismissal on the grounds of his HIV-positive status.[168] The court ruled rejecting the teacher's lawsuit on November 12, 2010, on the grounds that China's Teachers Law "stipulates that a teaching job requires applicants to have both mental and physical qualifications."[169]

---

[163] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_4.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (4) Right to health, para. 1, 5.

[164] Ibid, para. 5.

[165] "China Focus: China passes new medical reform plan," Xinhua News Agency, January 21, 2009.

[166] Shirley S. Wang, "WSJ: China Health Care System Overhaul To Take More than Money," Dow Jones Chinese Financial Wire, September 24, 2010.

[167] "China lifts its entry ban on HIV-AIDS foreigners," *China Daily*, April 28, 2010.

[168] Zhang Yue and Shan Juan, "Job seeker files case on HIV discrimination," *China Daily*, August 31, 2010.

[169] Zhang Yue, "Court rules against HIV job seeker," *China Daily*, November 13, 2010.

However, Human Rights Watch research over the NHRAP's 2009-2010 duration indicates that the Chinese government failed to deliver on health rights commitments in several key areas.

The Chinese government harasses individuals and civil society organizations devoted to protecting the rights of China's HIV-AIDS population.[170] Gao Yaojie, an activist physician who helped expose the government's cover-up of an HIV-AIDS epidemic in central Henan province in the 1990s, went into self-imposed exile in the United States in August 2009 after "constant harassment" by authorities seeking to obstruct her efforts to document the scandal.[171] In May 2010, Wan Yanhai, China's leading activist for sexual minorities and people with HIV-AIDS, followed Gao into self-imposed exile. He explained that relentless persecution by police and government officials had seriously disrupted his work at the nongovernmental organization Aizhixing Institute.[172] On August 6, 2010, police in Henan province detained Tian Xi, an HIV positive HIV-AIDS rights activist seeking state compensation for victims of China's blood contamination scandal. Tian Xi, who himself contracted HIV from a contaminated blood transfusion, has endured police harassment for years. He had an altercation with a hospital chief over the issue of compensation and pushed $600 of office equipment off a desk. He is charged with "suspicion of intentional destruction of property". Prosecutors are seeking a prison sentence of three years.[173]

Human Rights Watch research undertaken in 2009 on rights abuses related to China's 2008 Anti-Drug Law revealed that the Chinese government provides "almost no access to health care" in the country's mandatory drug detention centers.[174] HIV positive detainees are routinely denied anti-retroviral therapy and treatment for opportunistic infection such as tuberculosis. Instead of medically based treatment for drug dependency, detainees are subjected to forced labor and harsh physical punishments.[175]

The Chinese government also systematically denies essential medical testing and treatment to thousands of children suffering from industrial lead poisoning.[176] Hundreds of thousands of children who live in polluted villages adjacent to lead smelters and battery factories have

---

[170] Human Rights Watch, "*Restrictions on AIDS Activists in China*," ISBN: CI705, (New York: Human Rights Watch, 2005) http://www.hrw.org/en/reports/2005/06/14/restrictions-aids-activists-china Human Rights Watch.

[171] Minnie Chan, "Heartache of the AIDS Whistle-Blower Forced to Live in Exile," *South China Morning Post*, February 19, 2010.

[172] Marianne Barriaux, "China's AIDS activists face uphill struggle," Agence France Presse, July 13, 2010.

[173] Michael Sainsbury, "Deadly Way of Silencing AIDS Activists," *The Australian*, August 28, 2010.

[174] Human Rights Watch, *Where Darkness knows No Limits*, p.31.

[175] Ibid, pp. 31-32.

[176] Human Rights Watch, *China—"My Children Have Been Poisoned"* (publication pending).

been poisoned over the past decade.[177] A combination of factors, ranging from rampant corruption and local officials' obeisance to central government-imposed GDP targets, have led local officials to deny the scope and severity of lead poisoning in order to protect various industries, regardless of their environmental and health impacts.

As a result, security forces and local government officials in areas affected by industrial lead poisoning are covering up some lead poisoning cases, refusing to test some individuals for lead, or withholding or falsifying test results.[178] The government has also intimidated journalists and the parents of some child victims to keep them from publicizing lead poisoning incidents, and allowed polluting factories to continue to operate, or to secretly reopen after being shut down.[179]

Government officials and security forces have also harassed and intimidated parents seeking redress for the thousands of children poisoned by toxic melamine milk in 2008.[180] On March 30, 2010, a Beijing court tried Zhao Lianhai, who had become an activist for victims' families, on charges of "provoking disorder" in retaliation for his efforts to assist the thousands who became ill.[181] A Beijing court sentenced Zhao to a two-and-a-half-year prison term on November 10, 2010.[182] State media reported on November 23, 2010, that Chinese government authorities had accepted Zhao's application for medical parole, but did not indicate if or when Zhao might actually be released or under what possible conditions or restrictions to his freedom of speech or movement.[183] A posting on Zhao's personal blog on December 28, 2010, stated that he had been released on medical parole and that he was "deeply sorry" for remarks he made about the Chinese government in the past.[184] At the time of this report's publication, Zhao's release from custody had not been independently confirmed and his former lawyer asserted that Zhao's December 23, 2010 blog posting was

[177] Ibid.

[178] Ibid.

[179] Ibid.

[180] Phelim Kine (Human Rights Watch), "Censorship Isn't Good For China's Health," commentary, *The Wall Street Journal*, October 11, 2008, http://www.hrw.org/en/news/2008/10/11/censorship-isnt-good-chinas-health.

[181] Phelim Kine (Human Rights Watch), "China's Public Health Whitewash," commentary, *The Guardian,* June 23, 2010, http://www.hrw.org/en/news/2010/06/23/chinas-public-health-whitewash-0. Zhao helped to establish a grassroots advocacy group, Home for Kidney Stones Babies, which rallied parents of sick children to demand official compensation and an official day of remembrance. For his efforts, Zhao faces a possible prison term of up to five years.

[182] Christopher Bodeen, "Chinese dad whose son was sickened by tainted milk sentenced to prison for safety activism," Associated Press, November 10, 2010.

[183] "Air of expectancy as friends await release of Zhao," *The Standard*, November 24, 2010.

[184] Cara Anna, "Jailed Chinese father who protested tainted milk scandal released but lawyer cautious," Associated Press, December 29, 2010.

likely the result of "pressure from authorities who may have given Zhao his freedom in exchange for his silence."[185]

The Chinese government also continues to deny an official cover-up of the melamine poisoning during the 2008 Beijing Olympics. In May 2010, the Chinese government, the World Health Organization, and the International Olympic Committee jointly published a book, *The Health Legacy of the 2008 Beijing Olympic Games: Successes and Recommendations*, which omits mention of the scandal.[186]

The NHRAP provided the Chinese government an opportunity to clearly articulate mechanisms to eliminate illegal restrictions on Chinese citizens' right to health. A revised NHRAP should call for the following:

1. An immediate closure of all compulsory drug detention facilities and an expansion of access to voluntary, affordable, community-based outpatient drug dependence treatment;
2. An immediate shutdown of factories that lack systems for the mitigation of lead and other dangerous chemical contamination and a national initiative to make such systems mandatory;
3. Existing official monitoring and accountability mechanisms to be independent of untoward official influence to ensure that factory owners and local government officials comply with existing legislation to protect human health and the environment. Immediate cessation of the ongoing official harassment or harassment of people living with HIV/AIDS and their advocates;
4. Immediate cessation of ongoing official harassment of victims and family members of victims of both industrial contamination and the 2008 melamine poisoning, and guarantees to ensure victims receive adequate medical testing and treatment.

Rights to Freedom of Association and Assembly

The NHRAP states:

> The government will expand citizens' participation in political affairs in an orderly way at all levels and in all sectors, so as to guarantee citizens' right

[185] Ibid.

[186] Ibid.

> to participate.[187] The channels will be broadened to support mass organizations to participate in social management and public services, so as to protect the public's legitimate rights and interests.[188] The state will guarantee citizens' rights to criticize, give advice to, complain of, and accuse state organs and civil servants and give full play to the role of mass organizations, social organizations and the news media in supervising state organs and civil servants.[189]

However, during the NHRAP's 2009-2010 period, the Chinese government has intensified restrictions on activities of nascent civil society and nongovernmental organizations in areas ranging from women's rights activism to groups acting on behalf of people with HIV/AIDS. Yu Jianrong, chairman of the Social Issues Research Center of the Rural Development Institute of the China Academy of Social Sciences, said in a December 26, 2009 speech to the Beijing Law Association that the government's obsession with perceptions of "social stability" was depriving Chinese citizens of their legal right to participate in public life.

> Things that would ordinarily be considered regular social activities can all be seen [by the government] as "elements of instability." For example, demonstrations, labor strikes, transportation strikes—these activities are all being seen as "unstable." Now, even petitioning higher levels of government has been turned into an "element of instability"… once the local government says that something implicates "stability," then forget whatever views you may have held. Social stability has now become the highest goal of the nation's politics.[190]

In July 2009, the authorities shut down the Open Constitution Initiative, a leading public interest legal aid and research center better known under its Chinese name, Gongmeng, over alleged tax irregularities over foreign funding. Authorities also briefly detained Gongmeng's founder, Xu Zhiyong, and another employee. The Beijing tax authorities accused the research arm of Gongmeng of having "falsely registered as a commercial enterprise in view

---

[187] *National Human Rights Action Plan of China (2009-2010),* , April 13, 2009, Guarantee of Civil and Political Rights, (4) Right to participate, (6) The right to participate, para. 1, http://news.xinhuanet.com/english/2009-04/13/content_11177126_15.htm (accessed August 12, 2010).

[188] Ibid., para. 6.

[189] Ibid., (8) The right to oversee, para. 5, http://news.xinhuanet.com/english/2009-04/13/content_11177126_17.htm (accessed August 12, 2010).

[190] "Yu Jianrong: Maintaining a Baseline of Social Stability,(Part 8)" Translation of a speech to the Beijing Lawyers Association, December 26, 2009, http://chinadigitaltimes.net/2010/03/yu-jianrong-%E4%BA%8E%E5%BB%BA%E5%B5%98-maintaining-a-baseline-of-social-stability-part-7/ (accessed November 7, 2010).

of carrying out civic non-commercial activities," a move threatening to the broader NGO community since many, if not most, nonprofit groups in China opt to register as commercial enterprises. Doing so provides them a measure of legal status which until recently provided a measure of protection from traditional state hostility to the NGO sector.[191]

On March 1, 2010, the Chinese government implemented new regulations that place additional burdens on the ability of domestic NGOs to raise funds from international donors. The regulations introduce new requirements for receiving donations from foreign charities, philanthropies, and nonprofit groups, including producing notarized agreements and detailed application forms. While governments may impose reasonable regulations on donation procedures of nonprofit organizations, Chinese legal experts have pointed out that the most onerous requirements do not apply to nonprofit organizations run by the government, but only to independent NGOs. In addition, some of the provisions are at odds with China's own tax code. These rules open more avenues for arbitrary interference by government agencies and create uncertainties for civil society organizations even when they comply fully with the new regulations.[192]

On March 25, 2010, China's leading independent women's rights organization—the Women's Legal Research and Services Center—was abruptly notified that its affiliation with Beijing University had been terminated.[193] In a statement released on April 2, 2010, the Women's Center noted that the dissolution "was only the last one in the long series of difficulties faced by the center in its 15-year existence."[194] The statement pointed to systemic problems that stunt the growth of a healthy civil society in China, including barriers to raising charitable funds, government hostility to public interest litigation, and regulatory uncertainties that translate into a permanent struggle for organizational survival.[195]

---

[191] "China: Chokehold on Civil Society Intensifies," Human Rights Watch news release, April 12, 2010, http://www.hrw.org/en/news/2010/04/11/china-chokehold-civil-society-intensifies.

[192] Ibid. One group working on HIV/AIDS prevention, the Beijing Loving Source Information Center, which has partnered with the United Nations Children's Fund, Oxfam, the China AIDS Fund, and the Global Fund for Children, and other international organizations over the years, has publicly reported on the difficulties it has faced in complying with the new requirements. Several other NGOs have privately reported similar difficulties but are unwilling to voice their concerns publicly because they fear jeopardizing their work if they protest publicly and alienate the authorities.

[193] Because China's restrictive laws governing the registration of nonprofit organizations mandate that applicants be affiliated and sponsored by a governmental unit, the decision effectively ends the existence of the center as a registered nongovernmental organization (NGO).

[194] "China: Chokehold on Civil Society Intensifies," Human Rights Watch news release, April 12, 2010, http://www.hrw.org/en/news/2010/04/11/china-chokehold-civil-society-intensifies.

[195] Ibid.

The formation of independent trade unions is similarly blocked. Although the NHRAP states that, "Guarantee will be extended to trade unions … to carry out their work in accordance with the law and their respective charters,"[196] Chinese law does not recognize the right of workers to organize and form trade unions outside the state-affiliated All-China Federation of Trade Unions (ACFTU).[197] That prohibition has been criticized by the International Labor Organization as "a system of trade union monopoly [that] limits the right of workers to form and join organizations of their own choice."[198] The ACFTU's close ties to the government undermine its ability to advocate effectively for workers.

That lack of advocacy was highlighted by the union's inability or unwillingness to effectively mediate labor unrest which swept the Pearl River Delta export manufacturing zones of southern Guangdong province in the summer of 2010. The ACFTU's only public intervention during those strikes was an ill-conceived mediation attempt that degenerated into a melee resulting in the hospitalization of at least two workers.[199] The mainly migrant workers who participated in those strikes at several foreign-invested factories bypassed the ACFTU out of frustration with the union's unresponsiveness to their demands.[200] Yet the labor activism resulted in improved pay and benefits for workers at several factories, including those of Japan's Honda and Denso Corporation.[201] The ACFTU announced in August 2010 that it would pursue reforms aimed to develop a more democratic selection process for union leaders.[202] However, those planned reforms will create limited opportunities for independent union activity, given that the ACFTU has reiterated its stance that it "should not deviate from the leadership of the Communist Party."[203]

The NHRAP provided the Chinese government with an opportunity to clearly articulate mechanisms to eliminate illegal restrictions on Chinese citizens' right to participate. However, the NHRAP omits important ongoing violations of Chinese citizens' right to participate as well as measures to address them. A revised NHRAP should call for the following:

---

[196] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_15.htm (accessed August 12, 2010), chapter two, (6) The right to participate.

[197] Trade Union Law of the People's Republic of China, adopted April 3, 2007, art. 2.

[198] "Remarks by Juan Somavia at a press conference on the occasion of the signing of the Memorandum of Understanding for cooperation between China and the ILO," International Labor Organization, May 17, 2001, http://www.ilo.org/public/english/bureau/dgo/messages/2001/beijing.htm (accessed October 17, 2007).

[199] Michelle Phillips, "China strikers bypass union, organize with social media," *Washington Times*, June 28, 2010.

[200] Ibid.

[201] Jonathan Watts, "Labour unrest: Workers in China grasp the power of the strike," *The Observer,* July 4, 2010.

[202] Daisy Zhong, "Reforms planned to cut firms' influence over local unions," *South China Morning Post*, August 13, 2010.

[203] Ibid.

1. An unequivocal public statement of government support for the operations of China's civil society and nongovernmental organizations;
2. A new regulatory framework designed to allow civil society organizations and NGOs to legally operate independently without affiliation with a government entity or with registration as a commercial entity;
3. An end to the ACFTU's monopoly on union organizing and collective bargaining and ratification of the International Labor Organization's Conventions No. 87 and No. 98 on freedom of association and collective bargaining.

Guarantee of Human Rights in the Reconstruction of Areas Hit by the Devastating Earthquake in Wenchuan, Sichuan Province

On May 12, 2008, Sichuan province was hit by a huge earthquake that left almost 90,000 dead or missing and inflicted massive property damage.[204] For the first time in a civil emergency, the Chinese government responded by allowing thousands of volunteers to raise money, deliver relief supplies, and assist the survivors.[205] The Chinese government also eased its traditional restrictions on media in areas hit by natural disasters by allowing foreign correspondents relatively unobstructed access to the earthquake zone for the first 10 to 14 days following the quake.[206]

However, the Chinese government subsequently began to obstruct foreign media in the earthquake zone and responded harshly to allegations of shoddy construction after hundreds of schools collapsed and led to a disproportionate number of children's deaths.[207]

The earthquake's scale of destruction and the extent of human suffering it inflicted prompted a massive outpouring of public sympathy and support among the Chinese public.[208] Public concern about quake victims—fueled in part by extensive state media coverage of the devastation and government efforts to address it—likely prompted the inclusion of this section in the NHRAP as a symbol of the government's commitment to assist the earthquake victims.

---

[204] "Past disasters offer lessons," *China Daily*, April 19, 2010.

[205] Sophie Richardson (Human Rights Watch), "How Not to Respond to an Earthquake," commentary, *The Daily Beast,* April 14, 2010, http://www.hrw.org/en/news/2010/04/14/how-not-respond-earthquake.

[206] Ibid.

[207] Ibid.

[208] "Chinese give in outpouring of compassion after quake," Agence France-Presse, May 16, 2008.

The NHRAP states that Chinese government's priorities in the Sichuan earthquake zone include:

> Respecting earthquake victims. Registering the names of people who died or disappeared in the earthquake and make them known to the public.[209]

Despite that pledge, Chinese government officials and members of the security forces and their agents have pursued a relentless campaign of harassment and intimidation against relatives of the quake victims and activists who have questioned the government's responsibility for the earthquake's death toll. In particular, parents of the quake's thousands of child victims, who have demanded an official investigation of the collapse of thousands of schools, have been the target of official efforts to silence such demands.[210]

To date, Chinese courts have refused to accept any lawsuits filed by parents alleging that faulty construction contributed to the collapse of their children's schools.[211] Not only have many of these parents been harassed, detained, and in some cases kicked or punched by officials and members of the security forces, but the government has also pressured many of the victims' families to accept one-time compensation payments in exchange for ceasing to demand a public accounting.[212] As recently as June 21, 2010, police in the Sichuan provincial capital of Chengdu detained about 40 parents of children who died in the earthquake; the parents were attempting to petition authorities for an investigation into the collapsed school buildings and demanding adequate compensation.[213]

Efforts by Chinese civil society groups to compile independent lists of child earthquake victims and to investigate the circumstances of the collapse of schools in the earthquake have not been welcomed by the government, despite the aspiration spelled out by the NHRAP. The government's list of 5,335 child victims of the earthquake has been criticized by some parents and civil society activists as a gross underestimation.[214] Instead of responding

---

[209] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_9.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (9) "Guarantee of human rights in the reconstruction of areas hit by the devastating earthquake in Wenchuan, Sichuan province, para. 5.

[210] "China: End Quake Zone Abuses," Human Rights Watch news release, May 6, 2009. http://www.hrw.org/en/news/2009/05/06/china-end-quake-zone-abuses.

[211] Peter Ford, "China sentences quake activist Tan Zuoren," *Christian Science Monitor*, February 9, 2010.

[212] Ibid.

[213] Kristine Kwok, "Sichuan police detain 40 parents seeking justice after earthquake," *South China Morning Post,* June 22, 2010.

[214] Verna Yu, "Critics decry quake activist's jailing," *South China Morning Post*, February 10, 2010.

to these concerns, however, local officials harassed, intimidated, and arrested those who raised such allegations.[215] Government officials and security forces have obstructed the efforts of the Chinese artist Ai Weiwei to draft an independent list of child victims, which he believes number more than 7,000.[216] Others trying to uncover or publicize information about the victims have fared worse:

- Huang Qi, a veteran dissident and founder of http://www.64tianwang.com/, a website dedicated to publicizing human rights abuses across China. Huang was detained on June 10, 2008 in Chengdu while investigating allegations that shoddy construction had contributed to the collapse of schools in the earthquake. He was formally charged with "possessing state secrets" on July 18, 2008. On November 23, 2009, a court in Chengdu in Sichuan province sentenced Huang to three years' imprisonment without any public disclosure of the evidence against him or what type of secrets he allegedly possessed.[217]
- Zeng Hongling, a retired university professor. After posting online critiques of building standards in the Sichuan earthquake zone, Zeng was arrested in May 2008 and sentenced to a year of re-education through labor for "inciting disturbance," although his sentence was later suspended.[218]
- Liu Shakun, a teacher. Liu was reportedly arrested and sentenced in August 2008 to one year of "re-education through labor" on the charge of "disseminating rumors and disrupting social order" for posting online photographs he had taken of collapsed schools in the Sichuan earthquake zone. On September 24, 2008, Liu was released from a labor camp and allowed to serve the remainder of his sentence outside of custody.[219]
- Tan Zuoren, a literary editor and environmentalist. After trying to compile a name list of children killed in the Sichuan earthquake, Tan was detained in March 2009 on suspicion of "inciting subversion" and sentenced to five years' imprisonment on that charge on February 10, 2010.[220]

---

[215] Ibid.

[216] "Salt in their Wounds," *The Economist*, May 16, 2009.

[217] "China: Sham Trial of Veteran Rights Activist," Human Rights Watch news release, November 23, 2009, http://www.hrw.org/en/news/2009/11/23/china-sham-trial-veteran-human-rights-activist.

[218] "Tremors in Sichuan," *The Wall Street Journal Asia*," February 11, 2010.

[219] "China: End Quake Zone Abuses," May 6, 2009, Human Rights Watch news release, http://www.hrw.org/en/news/2009/05/06/china-end-quake-zone-abuses.

[220] Sky Canaves, "Beijing Sentences Activist Who Probed School Collapses, *The Wall Street Journal,* February 10, 2010.

The NHRAP provided the Chinese government with an opportunity to clearly articulate mechanisms to address human rights abuses related to the May 2008 Sichuan earthquake and its aftermath. However, the NHRAP fails to identify those violations and does not list measures to address them. A revised NHRAP should call for the following:

1. The immediate release of activists who seek to investigate the victims and causes of their deaths, and an explicit official prohibition against harassment by government officials and members of security forces and their agents of citizens exercising their legal right to gather information about the May 2008 Sichuan earthquake and circumstances related to the collapse of schools;
2. An explicit official prohibition against harassment and intimidation by government officials and members of security forces and their agents of parents seeking clarification of the circumstance surrounding their children's deaths in the May 2008 Sichuan earthquake;
3. An explicit official prohibition against illegal obstacles that prevent parents of children who died in the May 2008 Sichuan earthquake from filing legal action against the Chinese government for alleged responsibility for those deaths.

The Rights of Minorities

The NHRAP states:

> In the period 2009-2010, China will take further measures to protect the rights of ethnic minorities.[221]

Unlike other sections of the document, here the NHRAP commits the government to a series of measures to protect ethnic minority rights. They include the passage of laws on regional ethnic autonomy, guarantees of representation in China's parliament, the National People's Congress, bilingual education, employment creation programs, guarantees of the rights of ethnic minorities to learn and to use their native languages, and state spending to accelerate the economic development of ethnic minorities.[222] In addition, the NHRAP includes guarantees that China's 55 official ethnic minorities will each have at least one representative in China's parliament, the National People's Congress,[223] and that more than

[221] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_18.htm (accessed August 12, 2010), section three, Guarantee of the Rights and Interests of Ethnic Minorities, Women, Children, Elderly People and the Disabled, (1) The rights of ethnic minorities.

[222] Ibid.

[223] Ibid., para. 3.

95 percent of the population in the "ethnic autonomous areas" will have access to nine years of compulsory education by 2010.[224] The NHRAP also stipulates that China's ethnic minorities have the right to "learn, use, and develop" their native languages,[225] and notes the allocation of more than 2 billion Yuan ($300 million) "to accelerate [ethnic minorities'] economic and social development" in 2009-2010 in areas including infrastructure.[226]

However, during the 2009-2010 NHRAP period, international human rights organizations and the United Nations have documented the Chinese government's failure to adequately protect several key ethnic minority rights, particularly those of Tibetans and Uighurs in Xinjiang province. Navanethem Pillay, the United Nations high commissioner for human rights, specifically linked protests and ethnic violence that erupted across the Tibetan plateau in March 2008[227] and in the Xinjiang city of Urumqi in July 5, 2009[228] with "underlying causes … which include discrimination and the failure to protect minority rights."[229] Chinese state media rejected Pillay's comments as "biased," "indiscreet," and a reflection of "ingrained prejudice against China."[230]

Human Rights Watch has documented the Chinese government's use in Tibet of the charge of "inciting separatism" under article 103 of the criminal law as a tool for "conflating criticism of the government and its policies with a state security threat."[231] Since the March

---

[224] Ibid., para. 4.

[225] Ibid., para. 6.

[226] Ibid., para. 8.

[227] "China: Lhasa Torch Relay Tarnishes Olympic Movement," Human Rights Watch news release, June 17, 2008, http://www.hrw.org/en/news/2008/06/16/china-lhasa-torch-relay-tarnishes-olympic-movement. The protests, which started with peaceful demonstrations by Buddhist monks on March 10, became violent on March 14 after police began arresting monks and other Tibetan protesters. Some Tibetans then attacked Han Chinese shops and property, and police did nothing to stop this violence. The government sealed off Lhasa and suppressed any further unrest with a combination of mass troop deployment, arrests and detention of several hundred and possibly thousands of people, and extensive police surveillance of Tibetans in order to prevent further demonstrations. On March 18, the central government in Beijing claimed that "normalcy" had returned to Lhasa and that the city would be reopened to foreign visitors "soon," although access to Tibet by foreign media and diplomats remains highly circumscribed.

[228] "China: Xinjiang Trials Deny Justice," Human Rights Watch news release, October 15, 2009, http://www.hrw.org/en/news/2009/10/15/china-xinjiang-trials-deny-justice. The protests of July 5-7, 2009 in Urumqi were one of the worst episodes of ethnic violence in China in decades. According to government figures, 197 people, 134 of them Han Chinese, died in the violence, and some 1,600 were injured. Security forces arrested hundreds of suspected protesters over the following days and weeks, and the government promised harsh punishment—including the death penalty for the worst offenders—as early as July 9, 2009.

[229] United Nations High Commission for Human Rights (UNHCHR), "Statement of Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights at the 12th session of the Human Rights Council," September 15, 2009, http://www.unhchr.ch/Huricane/Huricane.nsf/f161d566b3624of880256610oo031b4co/2dd5a4bd46c13cefc1257631002d5b6b?OpenDocument (accessed August 30, 2010).

[230] Tan Yingzi and Peng Kuang, "Expert: UN Speech on Xinjiang Biased," *China Daily*, September 17, 2009.

[231] "China: Ensure Fair Trial for Tibetan Filmmaker," August 3, 2009, http://www.hrw.org/en/news/2009/08/03/china-ensure-fair-trial-tibetan-filmmaker. Sentences on separatism charges range from five years of imprisonment to the death penalty.

2008 protests across the Tibetan plateau, the Chinese government has intensified its controls of one of the key foundations of Tibetan culture, Tibetan Buddhism, including compelling "thousands of monks and nuns to follow political indoctrination programs, at times through coercive means such as collective detention in unmarked facilities."[232] The Qinghai provincial government's plans to make Mandarin Chinese the primary language of instruction in the province's Tibetan schools by 2015 sparked student protests in several areas in the province in October 2010 over concerns that the policy would undermine a key foundation of Tibetan culture.[233]

In Xinjiang, the Chinese government has pursued a policy since 2002 that has supplanted the Uighur language in favor of Mandarin, prompted burning of Uighur-language books, and imposed prohibitions on traditional customs related to weddings, funerals, and religious pilgrimages.[234] Those controls have only tightened since the ethnic violence in Urumqi in July 2009, rendering Xinjiang for the majority of its Uighur inhabitants, "a police state, where they lived in fear of arrest for the slightest sign of disloyalty toward Beijing."[235] Those abuses have dovetailed with economic marginalization of Uighurs through employment discrimination against Uighur job applicants in Xinjiang by Han-dominated employers.[236]

The plight of imprisoned Tibetan environmentalist philanthropist Karma Samdrup is emblematic of the human rights abuses that occur in Tibet and Xinjiang and the impunity enjoyed by the perpetrators. On June 25, 2010, a Xinjiang court sentenced Samdrup to a 15-year prison term on spurious charges of grave-robbing.[237] Samdrup's supporters characterized his prosecution and sentencing as an official reprisal for vocally defending his two brothers, who have been in police detention since August 2009 for attempting to expose alleged environmental abuses by police officials in their home village in Changdu prefecture, Tibet Autonomous Region.[238] Samdrup's case was rife with violations of due process and his lawyer Pu Zhiqiang said the trial "ignored the facts, trampled on the legal system, and

---

[232] Human Rights Watch, *World Report 2010,* ISBN: 978-1-58322-897-5, January 20, 2010, http://www.hrw.org/en/reports/2010/01/20/world-report-2010, p.293.

[233] Minnie Chan, "Qinghai will not rush over language reform," *South China Morning Post*, October 24, 2010.

[234] Nicholas Bequelin (Human Rights Watch), "Behind the Violence in Xinjiang," commentary, *International Herald Tribune*, July 9, 2009.

[235] Ibid.

[236] Andrew Jacobs, "Year After Urumqi Riots, Anger Simmers," *International Herald Tribune*, September 6, 2010.

[237] Andrew Jacobs, "Tibetan Philanthropist Receives 15-Year Sentence," *The New York Times*, June 25, 2010.

[238] "China: Investigate Torture Allegations in Tibet Philanthropist Trial," Human Rights Watch news release, June 23, 2010 http://www.hrw.org/en/news/2010/06/23/china-investigate-torture-allegations-tibet-philanthropist-trial?.

violated Karma's humanity."[239] The irregularities in Samdrup's trial included the court's refusal to consider his testimony regarding the torture he alleged he suffered at the hands of police attempting to extract a confession.[240] That torture included instances in which "officers repeatedly beat him, ordered fellow detainees to beat him, deprived him of sleep for days on end, and drugged him with a substance that made his eyes and ears bleed."[241]

The NHRAP provided the Chinese government with an opportunity to clearly articulate mechanisms to eliminate violations of the rights of ethnic minorities, particularly Tibetans and Uighurs. However, the NHRAP fails to identify either ongoing violations of ethnic minority rights in China or measures to address them. A revised NHRAP should call for the following:

1. The immediate release of all Tibetans and Uighurs detained in the aftermath of ethnic unrest in Tibet in March 2008 and in Urumqi in July 2009 who have not been charged with a criminal offense consistent with international legal standards, including those detained solely for exercising their right to peaceful expression;
2. Immediate access of international monitors to prisons and places of detention where Tibetans and Uighurs are held;
3. Measures to hold accountable, in a manner consistent with international human rights law, those responsible for using excessive force against unarmed demonstrators and/or subjecting them to arbitrary detention or enforced disappearances.

Performing International Human Rights Duties and Conducting Exchanges and Cooperation in the Field of International Human Rights

The NHRAP states:

> In the period 2009-2010, China will continue to fulfill its obligations to the international human rights conventions to which it has acceded, and initiate and actively participate in exchanges and cooperation in the field of international human rights.[242]

---

[239] Andrew Jacobs, "Tibetan Philanthropist Receives 15-Year Sentence," *The New York Times*, June 25, 2010.

[240] "China: Investigate Torture Allegations in Tibet Philanthropist Trial," Human Rights Watch news release, June 23, 2010 http://www.hrw.org/en/news/2010/06/23/china-investigate-torture-allegations-tibet-philanthropist-trial?.

[241] Ibid.

[242] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_24.htm (accessed August 12, 2010), chapter five, Performing International Human Rights Duties, and Conducting Exchanges and Cooperation in the Field of International Human Rights, para. 1.

The Chinese government has a poor record of cooperation with international bodies on issues of human rights. The government has rejected repeated demands for an independent international investigation into the March 2008 protests across the Tibetan plateau and their aftermath. In early April 2008, the government denied a request from Louise Arbour, then the United Nations high commissioner for human rights, to visit Tibet on the grounds that it was "inconvenient."[243] A separate appeal, issued jointly by six United Nations special rapporteurs for "full unhindered access," was similarly declined.[244] The International Committee of the Red Cross has never been allowed to carry out such work in China.[245] Although the Chinese government has been a party to the United Nations Convention Relating to the Status of Refugees since 1982, the Chinese government forbids the United Nations High Commissioner for Refugees (UNHCR) access to North Koreans who cross the border into China to evaluate their potential refugee status.[246]

The NHRAP reiterates a longstanding official position that the government is undertaking "legislative, judicial and administrative reforms" needed to "prepare the ground" for Chinese government ratification of the UN International Covenant on Civil and Political Rights (ICCPR).[247] Legal experts say that the key reform necessary for China to ratify the ICCPR is compliance with the covenant's article 9, which deals with arbitrary arrest and detention .[248] Jerome Cohen, a New York University law professor who specializes in China's legal system, attributes the Chinese government's reluctance to ratify the ICCPR to the perception of Chinese security agencies that ratification would require an end to practices which are "a key weapon in the police arsenal employed against political and religious dissidents, hooligans, suspects against whom sufficient evidence is lacking to sustain a criminal conviction and all others whose conduct is deemed to be 'antisocial' but not

---

[243] "China: Tibet Lockdown Exacerbates Tensions," Human Rights Watch news release, February 25, 2009, http://www.hrw.org/en/news/2009/02/25/china-tibet-lockdown-exacerbates-tensions.

[244] Ibid.

[245] Ibid.

[246] Human Rights Watch, "Denied Status, Denied Education: Children of North Korean Women in China," ISBN: 1-56432-304-8, April 14, 2008, http://www.hrw.org/en/reports/2008/04/11/denied-status-denied-education.

[247] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_24.htm (accessed August 12, 2010), chapter five, (1) Fulfillment of international human rights obligations, para. 10.

[248] Article 9 (1) of the ICCPR prohibits "arbitrary arrest or detention" and guarantees that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure that are established by law." Article 9 (3) requires that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable tie or to release. Article 9 (4) guarantees that "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

'criminal.'"[249] However, in 2009 and 2010, the Chinese government made no known effort, nor did it issue a deadline, to abolish legal mechanisms that enable arbitrary detention, including administrative detention such as re-education through labor and house arrest.[250]

The NHRAP characterizes the government's participation in the UN Human Rights Council's first Universal Periodic Review (UPR)[251] of China's human rights record in February 2009, as consisting of "constructive dialogues"[252] and the execution of "rational proposals."[253] Yet the Chinese government rejected every recommendation made during the process that related to the country's key human rights issues.[254] Its officials refused to answer any of the questions submitted by UN members in writing in advance of China's UPR session and failed to provide reasoning for the rejection of recommendations.[255] It also made manifestly false statements about its human rights record in its UPR report. Those included, "There is no censorship in the country," "No individual or press has been penalized for voicing their opinions or views," and, "There are no black jails in the country."[256] This raises questions

---

[249] Jerome Alan Cohen, "A Slow March To Legal Reform," commentary, *Far Eastern Economic Review*, October 5, 2007.

[250] Human Rights Watch, *An Alleyway in Hell*, p. 13. China's police also legal powers to routinely impose administrative detention via "re-education through labor," or *laojiao*, and house arrest, or *ruanjin*. Re-education through labor allows the police to unilaterally impose custodial sentences of up to three years while depriving detainees of any due process of law and judicial oversight House arrest, which Chinese police can impose completely arbitrarily and outside of any legal procedure, results in detention at home, with restricted and monitored internet and phone communications, and 24-hour surveillance by unidentified and often aggressive security forces.

[251] UNHCHR, "Universal Periodic Review," http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx (accessed September 4, 2010). "The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. It is a cooperative process which, by 2011, will have reviewed the human rights records of every country. Currently, no other universal mechanism of this kind exists. The UPR is one of the key elements of the new Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this new mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur."

[252] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_25.htm (accessed August 12, 2010), chapter five, Performing International Human Rights Duties, and Conducting Exchanges and Cooperation in the Field of International Human Rights, (2) Exchanges and cooperation in the field of international human rights, para. 3.

[253] Ibid.

[254] "Human Rights Watch Statement on UPR Outcome Report on China," Human Rights Watch newa release, June 9, 2009, http://www.hrw.org/en/news/2009/06/10/human-rights-watch-statement-upr-outcome-report-china. The government of China has rejected, without a single exception, every recommendation made during the process that pertained to freedom of expression and freedom of association, independence of the judiciary, guarantees for the legal profession, protection of human rights defenders, rights of ethnic minorities, reduction of the death penalty, abolition of re-education through labor, prohibition of torture, media freedom, and effective remedies for discrimination.

[255] Ibid.

[256] Ibid.

about the Chinese government's willingness to fulfill its requirement as a member of the HRC to "fully cooperate with the Council" (as set out in UN General Assembly resolution 60/251).[257]

At the 13th session of the Human Rights Council in March 2010, the Chinese government issued an oral statement asserting that it had integrated its UPR "accomplishments" into the NHRAP.[258] According to the statement, the Chinese government had over the past year "earnestly implemented" the accomplishments of its UPR as well as the NHRAP in areas including unemployment, access to medical treatment, social welfare protection, and greatly expanded compulsory education.[259] The Chinese government also claimed to have strengthened the establishment of rule of law and advanced human rights protections for ethnic minorities, women, children, and the elderly, without providing any documentation for such claims.[260] The reality of the Chinese government's UPR submission and its "obfuscation, denial and off-hand rejection of recommendations and questions,"[261] cast serious doubt on the credibility of the NHRAP's reference to the "accomplishments" of a UPR

[257] "There is no censorship in the country" (Para. 71), whereas any reference to the Beijing massacre on June 3-4, 1989, of peaceful protestors remains systematically suppressed 20 years later, China has the most expensive and extensive internet censorship system in the world, and just this week, the Chinese government issued a directive requiring computer manufacturers selling computers in China to pre-install censorship software;

"No individual or press has been penalized for voicing their opinions or views" (Para. 71), whereas criticism of the Communist Party can lead to arrest and sentencing, as illustrated by the six-month detention of Liu Xiaobo for signing a document calling for political reforms;

"There are no black jails in the country" (Para. 69), whereas legal professionals, domestic and international media, and researchers from state-run research institutes have documented and filmed these jails in the national capital;

"There is no such thing as law enforcement organs using state secrets to suppress human rights defenders" (Para 104), whereas veteran dissident Huang Qi faced state secrets charges and was subsequently convicted and sentenced to three years in prison in November 2009 related to his investigation of the collapse of schools in Sichuan's earthquake zone;

"The Chinese system of re-education-through-labor is similar to that of correctional service in other countries" (Para. 66), whereas the government itself claims that its existence is an obstacle to China's ratification of the ICCPR (Para. 63); or

"The amended law on lawyers contains clear provisions to protect lawyer's rights" (Para. 70), whereas the country's once most-prominent lawyer, Gao Zhisheng, was the victim of an enforced disappearance by security forces in February 2009. After more than a year of official denials regarding Gao's location and wellbeing, Gao reemerged in his Beijing apartment in early April 2010 but vanished again days later, apparently back into official custody. Gao's location, health, and circumstances remain unknown; while in June 2009, over 15 prominent human rights lawyers were victims of arbitrary disbarment on account of the "sensitive nature" of the cases they have represented.

[258] Luo Cheng, Third Secretary of the Permanent Mission of China to the United Nations in Geneva, 中国代表团在人权理事会第十三次会议，第六议题 一般性辦轮时的发言, Verbal statement delivered on March 19, 2010 during the General Debate of agenda Item 6 on UPR, 13th regular session of the HRC, unpublished document on file with Human Rights Watch.

[259] Ibid.

[260] Ibid.

[261] "Human Rights Watch Statement on UPR Outcome Report on China," Human Rights Watch news release, June 9, 2009, http://www.hrw.org/en/news/2009/06/10/human-rights-watch-statement-upr-outcome-report-china. The government of China has rejected, without a single exception, every recommendation made during the process that pertained to freedom of expression and freedom of association, independence of the judiciary, guarantees for the legal profession, protection of human rights defenders, rights of ethnic minorities, reduction of the death penalty, abolition of re-education through labor, prohibition of torture, media freedom, and effective remedies for discrimination.

process that the Chinese government intentionally undermined to prevent any substantive examination of its human rights record.

The NHRAP also lists its ongoing annual bilateral human rights dialogues with various countries, including the United Kingdom, the United States, the European Union, and Norway, as evidence of its success in the field of international human rights exchange and cooperation. However, Human Rights Watch has consistently documented the failure of those dialogues as mechanisms of positive change in addressing China's human rights problems. Those failings include the dialogues' lack of accountability, transparency, and clear benchmarks for progress.[262] The Chinese government often points to the dialogue as a human rights "deliverable," an end in itself, or insists that human rights issues can only be discussed in the context of those dialogues.[263]

The Chinese government is attempting to block the publication of a United Nations report alleging that Chinese ammunition was sent to Darfur in Sudan despite an arms embargo on the region.[264] The government has also expressed opposition to the commission of inquiry into war crimes and crimes against humanity in Burma, as recommended by Tomas Quintana, the United Nations special rapporteur for human rights in Myanmar.[265] That opposition threatens to undermine the creation of a commission to address numerous and systemic abuses in Burma, which persist despite decades of UN reporting and resolutions.[266]

In the summer of 2010, the Chinese government dispatched Deputy Prime Minister Fu Ying to Oslo to warn the Norwegian Nobel Committee that awarding the 2010 Nobel Peace Prize to imprisoned Chinese writer Liu Xiaobo would be seen by the Chinese government as "an unfriendly act" that could impact China's bilateral relations with Norway.[267] The Chinese government responded to the Nobel Committee's October 8, 2010 decision to award Liu the 2010 Nobel Peace by referring to the decision as "blasphemy" and "a violation of the principles of the peace prize."[268] In early November 2010, the Chinese government issued diplomatic notes to embassies in Oslo, the site of the annual Nobel awards ceremony,

---

[262] "Letter to Secretary Clinton Regarding the US-China Human Rights Dialogue," Human Rights Watch news release, May 7, 2010, http://www.hrw.org/en/news/2010/05/07/letter-secretary-clinton-regarding-us-china-human-rights-dialogue.

[263] Ibid.

[264] Ewen MacAskill, "China tries to block Darfur weapons report," *The Guardian*, October 22, 2010.

[265] "Asia: Freedom of Expression, Justice, Human Rights Defenders Under Threat," Human Rights Watch news release, October 25, 2010, http://www.hrw.org/en/news/2010/10/25/asia-freedom-expression-justice-human-rights-defenders-under-threat.

[266] Ibid.

[267] "China warns Norway against peace Nobel for dissident," Reuters, September 27, 2010.

[268] "A prize that goes against Nobel's ideas," Xinhua News Agency, October 14, 2010.

describing Liu as a "criminal," urging diplomats to boycott the ceremony, and to omit any congratulations or expressions of support for Liu's award.[269]

The NHRAP provided the Chinese government with an opportunity to clearly articulate its intentions to improve and expand its performance of its international human rights duties, and conduct exchanges and cooperation in the field of international human rights. However, the NHRAP instead renders an apparently willfully misleading characterization of the Chinese government's record in these regards, while failing to list measures to address its shortfalls. A revised NHRAP should call for the following:

1. An invitation to the United Nations high commissioner for human rights to lead an investigation into the factors leading to ethnic unrest in Tibet in March 2008 and in Urumqi in July 2009, and the Chinese government's response to that unrest;
2. Invitations to UN special rapporteurs to conduct independent assessments of China's human rights situation;
3. Specific measures to make China's bilateral human rights dialogues more meaningful, including benchmarks, transparency, and actionable deadlines on substantive issues;
4. A cessation of the Chinese efforts to obstruct both the UN report on violations of the arms embargo to Sudan and the formation of a commission of inquiry into war crimes and crimes against humanity in Burma.

[269] Michael Wines, "China asks European countries to boycott Nobel awards," *International Herald Tribune*, November 5, 2010.

III. The NHRAP's Omissions

The NHRAP devotes considerable attention to issues that are at best secondary to the urgent human rights problems described above. For example, under the NHRAP's "Right to Health" section, the Chinese government commits to increasing community sports facilities to 1.4 square meters per capita by 2010[270], while the "Cultural Rights" section prioritizes "overall promotion of digitalized movie, radio and TV service."[271]

Yet the NHRAP does not address several major human rights issues prioritized by both Chinese and foreign human rights activists: China's *hukou*, or household registration system; rights abuses related to rising numbers of property disputes; and human rights concerns related to China's increasingly active diplomatic, aid, and investment activities in the developing world.

China's *Hukou* System

The *hukou,* or household registration, system denies migrant workers and their families in China's cities access to many of the key benefits of permanent urban household registration including subsidized housing, state-sponsored retirement pensions, quotas of free or subsidized food, and guaranteed employment rights, education, and medical care.[272]

China's 220 million migrant workers[273] regularly and clearly express deep resentment at the *hukou* system,[274] and the Chinese government has stated repeatedly that it plans to eventually eliminate the system, though it has failed to provide any timetable for this.[275] The United Nations Committee on Economic, Social and Cultural Rights has also expressed concern about

---

[270] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_4.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (4) Right to health, para. 9.

[271] Ibid., http://news.xinhuanet.com/english/2009-04/13/content_11177126_6.htm (accessed August 12, 2010), (6) Cultural rights, para. 4.

[272] Human Rights Watch, *"One Year of My Blood": Exploitation of Migrant Construction Workers in Beijing*, Volume 20, No. 3 (C), March 11, 2008, p.25. "The holders of urban household registration permits have long been entitled to social welfare benefits and employment opportunities in the cities that are denied to rural dwellers. Chinese urban residents with permits have traditionally been entitled to state-sponsored retirement pensions, quotas of free or subsidized food, guaranteed employment rights, education, and medical care. Migrant workers who retain their original rural household registration have by definition been ineligible for such benefits."

[273] He Bolin, "They deserve a city house as a new decade's gift," *China Daily*, December 31, 2009.

[274] "China: NPC Should Scrap State Secrets, Hukou Laws," Human Rights Watch news release, March 4, 2010, http://www.hrw.org/en/news/2010/03/04/china-npc-should-scrap-state-secrets-hukou-laws.

[275] Human Rights Watch, "*One Year of My Blood*," p. 27, para. 3.

the *hukou* system's "de facto discrimination against internal migrants."[276] Some municipal governments have introduced *hukou*-related reforms for their migrant residents, but in some cases, the initiatives benefit only a small percentage of migrants.[277] Yet the NHRAP does not make any mention of the *hukou* system or its inherent discrimination.[278]

One of the more insidious effects of the *hukou* system is its obstruction of the right to education mentioned in the NHRAP,[279] China's constitution,[280] and international instruments.[281] The *hukou* system deprives many of the children of the country's estimated 220 million migrant workers access to free education in the cities, which other children receive because of their families' urban household registration permits. The NHRAP's "Right to Education" section states that the Chinese government will "make sure that almost all the children of migrant workers will receive nine-year compulsory education."[282] However, the NHRAP provides no timetable for the implementation of that initiative, nor does it provide any details of necessary government spending for its implementation.[283]

---

[276] Concluding Observations of the Committee on Economic, Social and Cultural Rights: People's Republic of China/C.12/1/Add.10713 May 2005, para. 15.

[277] "Slow Movement: Protection of Migrants' Rights in 2009," Human Rights Watch news release, December 16, 2009, http://www.hrw.org/en/news/2009/12/16/slow-movement. In March 2009, the Guangzhou municipal government announced that it would grant migrant workers rights to social insurance, vocational training, and legal aid previously reserved only for *hukou*-bearing residents. In June 2009, the Shanghai municipal government unveiled a plan to extend permanent residency status to migrants who meet rigorous educational, family planning, and tax payment history criteria, though this will only apply to a small fraction of Shanghai's estimated total of six million migrants.

[278] Human Rights Watch, *"One Year of My Blood": Exploitation of Migrant Construction Workers in Beijing*, Volume 20, No. 3 (C), March 11, 2008, p.25-26. China's *hukou,* or household registration system was created through a series of laws and regulations in the early 1950s designed to prevent a flood of impoverished rural dwellers from moving en masse to the cities. In 1958, the Chinese government implemented the Household Registration Rules of the People's Republic of China, or *hukou* system, which imposed stringent controls on rural residents coming to the cities. Since the 1980s, municipal governments have begun to ease those strict controls in response to the rising need of industrial labor.

[279] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_5.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (5) Right to education, para. 1. This section states: "Priority will be given to compulsory education and rural education [and] the system of assistance to poor students will be improved by increasing budget inputs, implementing all policies concerning financial aid to such students, expanding the assistance coverage and raising the level of assistance."

[280] Article 46 of the Constitution of the People's Republic of China guarantees that Chinese citizens "have the duty as well as the right to receive education."

[281] Article 13 of the ICESCR guarantees "the right of everyone to education."

[282] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_5.htm (accessed August 12, 2010), Chapter One, Guarantee of Economic, Social and Cultural Rights, (5) Right to education, para. 3.

[283] Ibid.

Sections of the NHRAP that could have made references to government efforts to address *hukou* discrimination include the right to basic living conditions,[284] the right to social security,[285] right to health,[286] and children's rights.[287] However, the *hukou* is not mentioned in any of these sections. It also could have outlined a specific timetable for the elimination of its discriminatory aspects, which deny migrant workers and their families the same basic social welfare benefits as urban residents with permanent urban household registration permits.

Property Disputes, Forced Evictions, and Demolitions

Although the NHRAP reiterates the government's commitment to the right to adequate housing [288] embodied in both China's Constitution[289] and international instruments,[290] it provides no concrete measures to address widespread, rampant abuse of such rights through government-sponsored property disputes, forced evictions, and demolitions.

China's state media carries almost daily reports on property disputes, which often involve angry protests, violent showdowns between police and aggrieved property owners, and suicides.[291] A domestic human rights organization, the Chinese Urgent Action Working Group (CUAWG), warned in March 2010 that collusion between corrupt officials and property

---

[284] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_2.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (2) Right to basic living conditions.

[285] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_3.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (3) Right to social security.

[286] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_4.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (4) Right to health.

[287] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_20.htm (accessed August 12, 2010), chapter three, Guarantee of the Rights and Interests of Ethnic Minorities, Women, Children, Elderly People and the Disabled, (2) Children's rights.

[288] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_2.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (2) Right to basic living conditions, para. 4. This section commits the Chinese government to: "Building more commercial and affordable housing to improve the living conditions of urban families with middle and low incomes; improving the low-rent housing program and accelerating the pace to solve the housing problems of the urban poor; and strictly implementing the relevant systems regarding demolition permits, fund supervision, relevant agreements, evaluation, examination and approval of projects to be transferred, housing security, compensation and aid, and public hearings, so as to guarantee the legitimate rights and interests of people whose housing is demolished to make way for new construction."

[289] Article 13 of the Constitution of the People's Republic of China "protects the right of citizens to own lawfully earned income, savings, houses and other lawful property."

[290] Article 11 of the ICESCR guarantees "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing."

[291] "New rules seek to ease China's property disputes," Reuters, January 29, 2010.

developers had created "a pandemic of illegal demolition" in China.[292] CUAWG described the rising incidence of forced eviction and demolitions one of China's leading causes of instability.

The Chinese government responded in January 2010 to the increasing frequency of property disputes with new guidelines specifying market-value compensation for state-appropriated property and stipulating that property disputes must be resolved through the court system.[293] However, a February 2010 report by the nongovernmental organization Chinese Human Rights Defenders concluded that "a combination of factors, including contradictory laws and regulations and collusion between developers and local authorities, have created an environment in which residents are at the mercy of real estate developers once demolition permits have been issued by local government … [creating] abuses of citizens' rights [that] are widespread and significant."[294] Demolitions and land confiscation, often without adequate compensation or relocation benefits, have become so rampant they have become "one of the biggest threats to China's stability."[295]

The Chinese constitution guarantees both the right to own private property and the inviolability of the homes of Chinese citizens.[296] However, China's Housing Demolition and Relocation Management regulation requires citizens to vacate their homes upon the issuance of a relocation permit by local government authorities to real estate developers.[297] Abuses including forced relocations are common because government agencies and developers routinely disregard the regulatory minimum 18-month notice for homeowners to negotiate compensation for their property and relocate.[298] Research by Chinese Human Rights Defenders suggests that collusion between property developers, police, and judicial officials is fueling the routine issuance of demolition orders in defiance of the legal rights of property owners.[299]

---

[292] "China's forced evictions cause instability—Report," Reuters, March 28, 2010.

[293] "New rules seek to ease China's property disputes," Reuters, January 29, 2010.

[294] Chinese Human Rights Defenders, "Thrown Out: Human Rights Abuses in China's Breakneck Real Estate Development," http://chrdnet.org/2010/02/08/thrown-out-human-rights-abuses-in-chinas-breakneck-real-estate-development/ (accessed December 24, 2010).

[295] Emma Graham-Harrison, "China evictions slam door on elites, works alike," Reuters, June 14, 2010.

[296] The Constitution of the People's Republic of China, article 13 states "The state protects the right of citizens to own lawfully earned income, saves, houses and other lawful property" while art. 39 states "The home of citizens of the People's Republic of China is inviolable. Unlawful search of, or intrusion into, a citizen's residence is prohibited."

[297] Wang Jingqiong, "Demolition regulation contradicts the law," *China Daily*, December 11, 2009.

[298] Ibid.

[299] Chinese Human Rights Defenders, "Thrown Out: Human Rights Abuses in China's Breakneck Real Estate Development," (IV) Causes of forced evictions: A contradictory legal framework & lucrative business, para.10, http://chrdnet.org/wp-content/uploads/2010/02/thrown-out-human-rights-abuses-in-chinas-breakeck-real-estate-development.pdf (accessed December 24, 2010).

Chinese legal scholars, including Peking University law professor Shen Kui, attribute abuses related to execution of the Housing Demolition and Relocation Management regulation to local government prioritization of land sale revenue over the legal rights of Chinese citizens.[300] Shen and other Chinese legal scholars have called for the government to issue a new law on property seizure and demolition which builds-in explicit protection for the rights of property owners.[301] Current legal protections for homeowners threatened by eviction and property demolition are routinely overridden because "many local governments get almost half of their revenue from land trading (and) to cut that profit source could be very hard."[302]

The NHRAP could have addressed this issue by outlining mechanisms to address them in either or both the "Right to Basic Living Conditions[303]" section as well as the "Safeguarding Farmers' Rights and Interests"[304] section. The NHRAP's "Right to Basic Living Conditions" section states an official commitment to "strictly implementing the relevant systems…. so as to guarantee the legitimate rights and interests of people whose housing is demolished to make way for new construction."[305] Similarly, The NHRAP's "Safeguarding Farmers' Rights and Interests" section commits the government to "Guaranteeing farmers' land rights … protect[ing] farmers' right to own and use their own land and obtain profits from the land, and punish[ing] any actions violating the regulations on land management."[306] However, the NHRAP neglects to mention that a combination of poor governance and corruption severely undermines the accomplishment of those objectives.

A revised NHRAP should address the human rights abuses related to rampant illegal evictions and demolitions in China by calling for:

---

[300] Ibid.

[301] Ibid.

[302] Ibid.

[303] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_2.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (2) Right to basic living conditions.

[304] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_8.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (8) Safeguarding farmers' rights and interests.

[305] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_2.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (2) Right to basic living conditions, para. 4. Those "relevant systems" include:"demolition permits, fund supervision, relevant agreements, evaluation, examination and approval of projects to be transferred, housing security, compensation and aid, and public hearings."

[306] *National Human Rights Action Plan of China (2009-2010),* April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177126_8.htm (accessed August 12, 2010), chapter one, Guarantee of Economic, Social and Cultural Rights, (8) Safeguarding farmers' rights and interests, para 2.

1. Amended or new legislation that provides precise criteria for eviction and demolition decisions, adequate advance notification to homeowners of such plans, creation of a public and transparent eviction/demolition appeals process, and strict enforcement of market-value compensation for affected homeowners;
2. Establishment of a pro bono legal fund to provide legal counsel to lower-income Chinese citizens embroiled in property disputes with government officials and developers.

Abuses of the Rights of China's Lesbians, Gays, Bisexual, and Transgender Population

The government decriminalized homosexuality in 1997 and removed it from the official list of mental disorders in 2001, but does not allow same-sex marriage, civil unions, or registered partnerships of same sex relations. In March 2010, Wang Longde, a former vice minister of health, told state media that the government needed to end discrimination against gay men in order to more effectively combat the country's HIV/AIDS epidemic.[307]

Despite these indications of progress, deeply entrenched social and official discrimination against lesbian, gay, bisexual, and transgender people in China inhibits their realization of fundamental rights of expression and association. Beijing police forced the cancellation of the first Mr. Gay China pageant in January 2010 without explanation.[308] Later that month, Chinese government officials forbade local gay rights activists from sending a Chinese delegate to the February 2010 Mr. Gay World pageant in Oslo, Norway.[309] In September 2010, Beijing police detained hundreds of gay men rounded up in a park in the city's Haidian district in an operation that appeared designed to harass and intimidate gays.[310] The detained men were reportedly released only after providing personal identification and submitting to blood tests.[311]

The Chinese government failed to use the opportunity of the NHRAP to provide specific measures to protect the right of China's lesbian, gay, bisexual, and transgender population. A revised NHRAP should call for the following:

---

[307] Shan Juan and Xin Dingding, "Include Gays in the Fight Against HIV," *China Daily*, March 10, 2010.

[308] Marianne Barriaux, "Beijing police cancel China's first gay pageant," Agence France Presse, January 15, 2010.

[309] Raymond Li, "No Mr. Gay China for world final," *South China Morning Post*, January 20, 2010.

[310] Yang Jie, "Police raid popular gay hangout," *Global Times*, September 28, 2010.

[311] Ibid.

1. An initiative to draft new laws that forbid the abuse of and discrimination against persons based on sexual orientation and gender identity;
2. The launch of a national educational campaign on the rights of LGBT people and the legal penalties for discrimination and abuse of those rights;
3. An explicit prohibition against arrests, harassment, and intimidation from members of the security forces on grounds of perceived sexual preference and the announcement of specific punitive measures against security force personnel who are found to have engaged in such misconduct, including illegal detention and illegal forced blood tests of detainees.

China's Human Rights Guarantees for Foreign Policy, Investment, and Development Initiatives

The NHRAP fails to provide any guarantees that the Chinese government plans to integrate international human rights standards into its foreign policy, foreign investment, and foreign development initiatives. This omission will likely only deepen growing international concern and suspicion about the apparent willingness of the Chinese government to do business with some of the world's most abusive regimes.

The Chinese government offered ongoing diplomatic and financial assistance to abusive regimes including Burma, Sudan, and Zimbabwe during the NHRAP's 2009-2010 period, although China uncharacteristically agreed to United Nations sanctions against 15 North Korean officials in July 2009.[312] The Chinese government underscored its apparent willingness to overlook gross human rights abuses in favor of business deals in the developing world in October 2009 by inking a multibillion dollar investment deal with Guinea [313]just weeks after elements of Guinea's military gunned down unarmed prodemocracy demonstrators.[314]

The Chinese government's pressure on the Cambodian government in December 2009 to forcibly deport a group of 20 Uighurs, including two young children, back to China, also highlighted China's unwillingness to respect the international legal norms of non-refoulement.[315] Those deportations constituted a breach of the UN Convention Relating to the

[312] Human Rights Watch, *World Report–2010,* Human Rights Watch, ISBN: 978-1-58322-897-5, January 20, 2010, pp. 296-297.

[313] Ibid, p. 296.

[314] "Guinea: Stadium Massacre, Rape Likely Crimes Against Humanity," Human Rights Watch news release, December 17, 2009, http://www.hrw.org/en/news/2009/12/17/guinea-stadium-massacre-rape-likely-crimes-against-humanity.

[315] "China: Account for Uighurs Forcibly Repatriated to China," Human Rights Watch news release, January 28, 2010, http://www.hrw.org/en/news/2009/12/22/china-forcibly-returned-uighur-asylum-seekers-risk.

Status of Refugees and its 1967 Protocol, and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, to which Cambodia is a party.[316] The Chinese government labeled the deported Uighurs "criminals" and indicated, without verification, that many were wanted for participating in incidents such as the ethnic violence in Urumqi in July 2009.[317] Since the deportation, the Chinese government has declined to provide any verifiable information about the health or whereabouts of the Uighur deportees.

[316] Ibid.

[317] Ibid.

IV. Recommendations

To the Government of the People's Republic of China:

- Establish an independent NHRAP review commission to evaluate the success of the plan's objectives for addressing torture, illegal detention, fair trial, the rights of petitioners, the right to health, and other issues targeted in the NHRAP which have a direct impact on the physical safety, well-being, and quality of life of millions of Chinese citizens. The commission should analyze the gaps between the NHRAP's objectives and their implementation. The commission should identify the NHRAP's shortfalls in order to create a revised NHRAP with benchmarks, timelines, and periodic assessments to evaluate its implementation. The commission's composition should include representatives of the following:
    - Key government agencies involved in the drafting of the NHRAP;
    - Key academic institutions involved in the drafting of the NHRAP;
    - Key nongovernmental organizations involved in the drafting of the NHRAP;
    - The Public Security Bureau, which was not involved in the NHRAP's drafting but is linked to many rights abuses documented in this document; and
    - Chinese scholars and lawyers well-regarded by both the Chinese government and its critics.
    - This review commission should consult regularly with United Nations special rapporteurs with expertise in specific areas of NHRAP concern including: The special rapporteur on extrajudicial, summary or arbitrary executions; the special rapporteur on the promotion and protection of the right to freedom of opinion and expression; the special representative of the secretary-general on the situation of human rights defenders; the special rapporteur on the independence of judges and lawyers; the United Nations' independent expert on minority issues; the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the special rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights.
- Hold a public, open-to-the-media consultation on that commission's evaluation of the successes and failures of the NHRAP. Along with members of the public, the consultation should involve the following:
    - A senior government minister tasked with responsibility for human rights development and protection;

    - Representatives of the ministries, agencies, academics, and representatives of the government-organized nongovernmental organizations that drafted the original NHRAP;
    - Representatives of China's *weiquan*, or human rights lawyers' movement, which has been the target of official harassment and intimidation throughout the NHRAP's 2009-2010 period;
    - Representatives of the Ministry of State Security (MSS) and the Public Security Bureau (PSB), whose officials are frequently linked to human rights abuses in China.
- That public consultation should develop a blueprint for a fresh, updated National Human Rights Action Plan containing the following elements:
    - Priorities aimed to tackle the most egregious, ongoing abuses of human rights in China;
    - Transparent benchmarks and timelines for monitoring the plan's implementation;
    - A public enforcement mechanism aimed to ensure that all elements of China's bureaucracy, including the MSS and PSB, comply with the plan's objectives.
- Ensure that a new, improved human rights action plan addresses the key shortfalls in the NHRAP, including by establishing transparent benchmarks to measure progress in the following areas:
    - Enforcing the prohibitions on torture;
    - Enforcing prohibitions on illegal detention, particularly arbitrary arrest and enforced disappearances in Tibet and Xinjiang and in "black jails" across China;
    - Enforcing the rights to a fair trial, to freedom of association and assembly, to expression, to information, and to redress, as guaranteed under Chinese law;
    - Guaranteeing freedom of religious belief and the rights of ethnic minorities;
    - Securing human rights in the reconstruction of areas hit by the devastating earthquake in Wenchuan, Sichuan province, particularly to ensure independent investigations into the cause of deaths of children and their identities;
    - Ensuring fulfillment of international human rights duties and obligations in the realm of exchanges and cooperation in the field of international human rights;
    - Ending the death penalty and, until such time, ensuring transparency in implementation of the death penalty, particularly through collection and public dissemination of data on the number of executions.
- Ensure that a new, improved human rights action plan addresses significant omissions in the original NHRAP, including rights abuses related to the Chinese government's *hukou*, or household registration system, and the omission of human rights guarantees for China's foreign policy, investment, and development initiatives.

- Revisit and meaningfully respond to recommendations by UN member states raised in the UNHCHR's first-ever Universal Periodic Review (UPR) of China's human rights record.
- Lift the ongoing restrictions on access to Tibet through the following initiatives:
    - Approve an outstanding request by the United Nations high commissioner for human rights and six United Nations special rapporteurs to visit Tibet;
    - Open Tibet to unimpeded access by foreign correspondents.
- Publish a specific timetable for ratification of both the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention Against Torture.

Acknowledgments

The report was edited by Sophie Richardson, Asia advocacy director at Human Rights Watch, and reviewed by Robin Shulman, consultant in the Program Office, and Dinah Pokempner, general counsel.

Diana Parker and Andrea Cottom, associates in the Asia Division, provided administrative and technical assistance. Production assistance was provided by Grace Choi, Kathy Mills, Veronica Matushaj, Anna Lopriore, Rafael Jimenez, Fitzroy Hepkins, and Jose Martinez.

Human Rights Watch wishes to thank several donors for their support including David A. Jones, Jr., Mary and Michael E. Gellert, James H. Ottaway, Jr., Anita and David Keller, and The Silicon Valley Community Foundation, as well as a very generous anonymous donor.

HUMAN RIGHTS WATCH
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

www.hrw.org

HUMAN RIGHTS WATCH

Promises Unfulfilled

An Assessment of China's National Human Rights Action Plan

In April 2009, the Chinese government unveiled its first-ever National Human Rights Action Plan (NHRAP). Adoption of the NHRAP was a welcome development, suggesting greater Chinese government commitment to the rights embodied in China's laws and constitution and the Universal Declaration of Human Rights.

During the two-year term of the NHRAP, which ended in December 2010, the Chinese government continued its policy of prioritizing the rights of "subsistence and development" over civil and political rights. The United Nations praised China's successes in delivering on some of those economic and social rights, particularly in the areas of poverty alleviation.

While the Chinese government promoted the potential of the NHRAP to address serious human rights deficiencies, it simultaneously tightened restrictions on rights to expression, association, and assembly. Abuses included the sentencing of high-profile dissidents such as Nobel Peace Prize laureate Liu Xiaobo to lengthy prison terms on spurious state secrets or "subversion" charges, expanded restrictions on media and internet freedom, as well as tightened controls on lawyers, human rights defenders, and nongovernmental organizations. During the NHRAP period, the Chinese government broadened controls on Uighurs and Tibetans, and engaged in widespread enforced disappearances and arbitrary detentions, including in secret, unlawful detention facilities known as "black jails."

Promises Unfulfilled details that rollback of key civil and political rights and how those limitations enabled—rather than reduced—a host of human rights abuses specifically targeted in the NHRAP. The report also provides recommendations for how the Chinese government can make meaningful improvements in its approach to human rights in 2011.

Li Xuemei, wife of Zhao Lianhai, is dragged away by police officers after being barred from the trial of her husband Zhao Lianhai, an activist on behalf of victims of melamine-tainted milk, in Beijing on Tuesday, March 30, 2010. A Beijing court sentenced Zhao to a two-and-a-half-year prison term on November 10, 2010, on charges of "provoking disorder" in retaliation for his efforts to assist the thousands who became ill in one of China's worst food safety scandals. It was reported that Zhao's personal blog in December 2010 stated he was released on medical parole and contained an apology, but his release from custody has not been independently confirmed.