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BREAKING THE LAW

CRACKDOWN ON HUMAN RIGHTS LAWYERS AND LEGAL ACTIVISTS IN CHINA

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

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INTRODUCTION

"When we insist on the rule of law and are public about it (because of the Internet, millions of people might be watching), we can at least embarrass government officials for their illegal actions and hypocrisy, and embarrassment sometimes stays their hands. But they do not like this, and sometimes we pay a price."

Teng Biao, former Chinese lawyer, Law professor at the Chinese University of Politics and Law[1]

The "rule of law" is a goal that China's leaders have long hailed in re-building the legal system that was almost completely destroyed during the Cultural Revolution in the 1960s and 1970s. While the Chinese government continues to publically endorse the notion of rule of law, many of its acts and statements in fact demonstrate a disregard for the law and legal professionals. Among the more than 156,000 lawyers in China,[2] only a small proportion are willing to take the risk of representing victims of human rights violations. These lawyers constitute just one part (albeit a very important part) of the "rights defence" (*weiquan*) movement, a growing domestic trend using Chinese law to protect legal rights of individuals.

In recent months, an unprecedented offensive against human rights lawyers, legal activists and legal aid organization has threatened not only the legal profession and the weiquan movement but also the very future of the justice system in China. Without the participation of these lawyers and legal activists the legal system will falter and will not be able to meet the needs of the Chinese people or China's rapid economic development.

Since May, judicial authorities have pressured law firms to fail the annual assessment of many of their lawyers who took up cases involving human rights violations. At the time of publication, at least 16 human rights lawyers have failed to pass their individual annual assessments or the law firm where they are employed has failed its assessment. Four of these lawyers have already had their professional licences invalidated by the judicial authorities. Without a valid licence, lawyers face constraints in representing those seeking to obtain justice and redress for human rights violations and loss of livelihood. This type of harassment also dissuades other lawyers from pursuing human rights cases.

In July, the Beijing Municipal Justice Bureau warned all Beijing law firms to be cautious in dealing with cases related to the violence that broke out in the country's northwest Xinjiang Uighur Autonomous Region in order to "defend national unity and ethnic solidarity".[3] The Bureau has also warned some human rights lawyers not to take up any cases related to this unrest.

In July and August, authorities shut down a legal aid and research centre, the Open Constitution Initiative (OCI, also called *Gongmeng* in Chinese) which offered legal assistance to many victims of human rights violations in the past six years since its establishment and fined it more than 1.4 million yuan (approximately USD 200,000). Xu Zhiyong, one of the founders of OCI and another staff member were detained at the end of July on suspicion of "tax evasion" a charge with a maximum of seven years' imprisonment if convicted. They have both since been reportedly released.

The number of human rights lawyers disbarred and on the edge of disbarment is the highest in recent years. This appears to be part of a wider pattern of the authorities' control and repression of activists during this "sensitive" year with many notable anniversaries. Such anniversaries include the 20th anniversary of the 1989 pro-democracy movement and the 60th anniversary of the founding of the People's Republic of China on 1 October. The Chinese goverment increasingly employs police control, surveillance and arbitrary detention against human rights lawyers and activists and their families, particularly in the lead-up to and during significant public events. Such tactics were used this year prior to the anniversary of the 1989 military crackdown of the pro-democracy movement. It is likely, therefore, that the same pattern of control will prevail throughout this year.

Amnesty International urges the Chinese government to cease harassment of lawyers who undertake human rights violation cases and ensure that they are able to freely choose their clients and represent them in legal proceedings. This includes ensuring that the All-China Lawyers Association and its local branches act independently from the Chinese government in line with international human rights standards, including General Comment No. 13 on the International Covenant of Civil and Political Rights[4] which provides among other things that lawyers should be able to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter and the United Nations Basic Principles on the Role of Lawyers, which provides that "lawyers shall be entitled to form and join self-governing professional associations to represent their interests.... without external interference".[5]

HARASSMENT, DETENTION OF AND VIOLENCE AGAINST LAWYERS

INTIMIDATION AND ASSAULT OF HUMAN RIGHTS LAWYERS

Human rights lawyers in China have been harassed, intimidated, assaulted, abducted, forcibly disappeared, placed under surveillance and house arrest and faced criminal charges for protecting the rights of others. In the first half of 2009 alone, Amnesty International has learned of at least four human rights lawyers who have been threatened with violence; at least 10 who were prevented from meeting with or representing their clients in courts, and at least five who were briefly detained, one for one month, because of their human rights work.

- In the early hours of 3 June 2009, police detained lawyers **Lan Zhixue** and **Tang Jitian** in the offices of an NGO in Beijing. They released Lan Zhixue in the late afternoon of the same day but detained Tang Jitian until later that night. Police followed Tang Jitian after his release and detained him again at approximately 2:30am on 4 June. He was first kept in a hotel in Haidian and then transferred to another one in Chaoyang district and guarded by more than 10 internal security police until his release at approximately 7:00pm on 7 June. The Police also told him to "be cooperative in future; don't be too idealistic".

- Ahead of the 20th anniversary of the 1989 pro-democracy movement, police monitored the homes of legal scholar **Teng Biao** from 25 May to 5 June, Beijing-based lawyers **Li Heping**, **Li Fangping** and **Jiang Tianyong** from 25 May to 7 June and **Li Xiongbing** from 4 to 10 June. They were escorted by the police wherever they went. On 3 June, the police officers guarding Jiang Tianyong prohibited him from leaving his home and forced him to stay there until the evening of 7June.

- On 13 May 2009, a group of Jiangjin district police officers in Chongqing beat up and took Beijing-based lawyers **Zhang Kai** and **Li Chunfu** from their client's house in handcuffs. The client's father was a 66-year-old Falun Gong practitioner who had died suddenly in custody in Chongqing's Xishanping Re-education Through Labour facility on 28 January 2009. The client intended to sue the Re-education Through Labour facility for wrongdoing.

- On 13 April 2009, Beijing-based lawyers **Cheng Hai** and **Zhou Peng** were attacked by at least four individuals who claimed to be from a government agency responsible for co-ordinating the offices of the police and courts in Chengdu, Sichuan province. The lawyers were on their way to meet a client's family when they were attacked. Their client, Tao Yuan, is a former Beijing Normal University graduate student and Falun Gong practitioner who is currently imprisoned for "using a heretical organization to undermine implementation of the law". His family had asked the two lawyers to apply for Tan Yuan's release on medical parole.

■ On 13 April 2009, two other Beijing-based lawyers – **Wu Jiangtao** and **Li Renbing** – were also blocked from meeting the family of their client, detained Falun Gong practitioner Wei Cheng, when they arrived at Changchun city in northern Jilin province. Police put Wei Cheng's family and relatives under surveillance and threatened them with imprisonment if they hired a lawyer.

■ On 10 April 2009, Guangxi-based lawyer **Yang Zaixin** was attacked by five unidentified men at the spot where he and some farmers, who claimed to be victims of official land seizure, were supposed to meet. They had made the arrangement over the phone. However, as soon as Yang Zaixin arrived, he was surrounded by unidentified men and severely beaten. The men ran away when a large group of farmers arrived.

■ On 8 April 2009, in a second instance of harassment, Beijing-based lawyer **Li Heping** was twice denied access to his client, Guo Quan, Associate professor of Nanjing Normal University and an activist on political and civil rights. Guo Quan has been detained on suspicion of "inciting subversion of state power" under article 105(2) of the Criminal Law of the People's Republic of China (Criminal Law)[6] since November 2008 after he issued a letter to the 17th Communist Party Congress requesting democratic elections and political reform.

■ On 23 and 24 March 2009, Beijing-based lawyers **Jiang Tianyong** and **Tang Jitian** (who was also briefly detained in June, see above), after being appointed by their client's family, were denied the right to meet their client Ge Hefei, a detained Falun Gong practitioner in Hebei. Judge Liu Yanfeng of the Feixiang County People's Court, Hebei province, told the two lawyers on 23 March that Gei Hefei did not want to meet with them. However, the judge failed to substantiate this claim. According to article 33 of the Law on Lawyers of the People's Republic of China (Law on Lawyers),[7] lawyers can meet with their clients as long as they present their lawyer's license, certification from their law firm and an authorization letter requesting their representation.

CRIMINAL DETENTION AND IMPRISONMENT OF LAWYERS

Below are a few recent cases of lawyers who are being prosecuted for their work in defence of human rights. These cases of some of the most prominent human rights lawyers in China are additional examples of the pressures faced by those who stand up to defend the rights of others.

■ On 4 July 2009 authorities in Dalian city, Liaoning province, criminally detained lawyer **Wang Yonghang**, who has represented Falun Gong practitioners. On that day, approximately 20 plainclothes police broke into his home and took him and his wife to a detention centre. The police, who had no warrant, also searched their home, and confiscated their computer, camera, printer, and several books. His wife was released the next day, and Wang Yonghang was moved to another place of detention. After repeated requests from his wife, Dalian City Police Detention Centre, the place where he is currently held, gave her a detention notice which said that Wang Yonghang had been detained on suspicion of violation of Article 300 of the Criminal Law, which deals with "superstitious sects, secret societies and evil religious organisations" and has been used to imprison many Falun Gong practitioners. His wife has learned from sources that he has been beaten during interrogation. The two lawyers his wife hired tried to visit him at the detention centre on 14 July, but they were turned back. On 20 July, a Dalian City internal security police officer called the two lawyers and again told them

that they were not allowed to meet with Wang Yonghang. This violates article 33 of the Law on Lawyers.

- On 16 April 2009, Heyuan Intermediate People's Court in Guangdong province upheld the guilty verdict of Shenzhen-based lawyer **Liu Yao** for "intentional destruction of property" under article 275 of China's Criminal Law but reduced the sentence to 18 months in prison, suspended for 2 years. He was released from the detention centre after more than 15 months. In 2006, villagers from his hometown in Paitou sought the assistance of Liu Yao in a land dispute involving the Heyuan Fuyuan Hydropower Corporation and the Dongyuan county government. He discovered that the hydropower company had not obtained the necessary approvals to convert the farmland to non-agricultural use. In November 2007, Dongyuan county's State Land and Resource Bureau ordered the company to halt construction of the hydropower plant, but the company ignored the order and continued the construction. In December 2007, Liu Yao and a group of villagers made two trips to the construction site to demand that Fuyuan cease construction, resulting in clashes and alleged property damage. Authorities took Liu into custody on December 18, 2007, and detained him at the Dongyuan County Detention Centre until April 16, 2009. Based on the Law of Lawyers, the conviction means that Liu Yao will be permanently prohibited from practicing law as a lawyer. In early February 2009, 511 Shenzhen lawyers signed a petition calling for the Heyuan Intermediate People's Court to hold an open and fair hearing to adjudicate his second appeal.

- Between 28 February and 30 March 2009, human rights lawyer **Wei Liangyue** and his wife Du Yongjing were detained. They have since been released on bail, pending further investigation. Wei Liangyue remains under suspicion of "gathering a crowd to disturb social order" under article 209(1) of China's Criminal Law and Du Yongjing is still under suspicion of "using a heretical organization to undermine implementation of the law" under article 300(1) of China's Criminal Law. Wei Liangyue is an experienced lawyer in Heilongjiang province and has often provided legal aid to local people who face human rights violations, including Falun Gong practitioners who have been detained by the Chinese authorities simply for their beliefs.

- **Gao Zhisheng** was taken from his home in Shaanxi Province by more than 10 security agents on 4 February 2009. He has been held incommunicado at an unknown location ever since. In December 2006, Gao Zhisheng was sentenced to three-years in prison, suspended for five years, for "inciting subversion of state power" under article 105(2) of China's Criminal Law. He was also sentenced to one year deprivation of political rights. He has been kept under constant surveillance since he was sentenced, which goes far beyond the legal provisions for those serving suspended sentences in China. In April 2007, Gao Zhisheng publicized the torture and other ill-treatment he had suffered while in custody awaiting trial. This led to an escalation of the oppression and harassment of him and his family. On 13 September 2007, he published another open letter, this time addressed to the US Congress, drawing attention to the deteriorating human rights situation in China. Nine days later, unidentified men abducted him off the street and took him to an unknown location. During the six weeks of enforced disappearance that followed security agents subjected Gao Zhisheng to torture. Among many other things they stripped him, beat him severely, shocked him with electric batons all over his body and used toothpicks to pierce his genitals. They held lit cigarettes close to his eyes for several hours, which left him partially blind for several days afterwards.[8] Earlier this year, his family fled to the US. Voted in 2001 as "one of

China's top ten lawyers" by a publication run by the Ministry of Justice, Gao Zhisheng is a self-trained legal professional with a history of representing the victims of some of the most egregious cases of human rights violations by the police and other government agencies. In June 2007 Gao received the Courageous Advocacy Award of the American Board of Trial Advocates. His memoirs, *A China More Just*, were published in English the same year.

■ On 17 June 2009, four police officers from Shanghai Zhabei district summoned **Zheng Enchong** for interrogation of "economic investigation" and detained him for over nine hours. During the detention, the police officers slapped him on his face and hit the back of his head, held burning cigarettes close to his lips and eyelids, and stripped him of his clothing except for a pair of briefs and made him stand nearly naked for fifteen minutes. The authorities also frequently harassed his family members and in particular his wife, Jiang Meili, who has also been detained briefly at least three times. This was the latest incident of official interference with Zheng Enchong's legal work.

In July 2001, Shanghai judicial authorities revoked his lawyer's licence after he had publicly advocated for an amendment to a provision within China's Constitution which allows the state to take over land and residential property in the name of "public interests", which proved to be easily abused by the local authorities for forced evictions. While he still had a professional licence to practise law, he had represented victims of forced eviction by Shanghai's urban redevelopment projects on their rights to fair compensation from the authorities. After the authorities revoked his license, he continued to give legal advice to victims of human rights violations.

In October 2003, Zheng Enchong was convicted of "illegally providing state secrets outside of the country" under article 111 of China's Criminal Law and sentenced to three years' imprisonment and a subsequent year of deprivation of political rights after a closed-door trial at Shanghai No. 2 Intermediate People's Court. The alleged "state secrets" turned out to be a fax relating his personal account of police action against a worker demonstration at a Shanghai food plant and a public copy of a news article covering protests by a group of displaced residents which he sent to the New York-based non-governmental organization Human Rights in China.

While serving his sentence in Shanghai Tilanqiao Prison, he was forced to work for 15-16 hours a day and was assigned to sleep next to a bucket used as the toilet for the cell. On 14 January 2005, he was beaten severely after asking a prison guard for some paper to write a letter to the central government, listing the names of people who had died after the authorities forcibly relocated them. Upon completion of his sentence on 5 June 2006, the authorities placed him under tight surveillance, limited his movement and subjected him to frequent interrogations and brief periods of detention for alleged criminal investigation.

HINDERING REPRESENTATION

RESTRICTIVE REGULATIONS FOR LAWYERS TAKING ON "MASS CASES"

All lawyers in China must join a local branch of All-China Lawyers Association (ACLA),[9] an association that manages the legal profession and is comprised of lawyers and law firms. The ACLA is subordinate to the Ministry of Justice.[10] Local justice bureaus and ultimately the Ministry of Justice are responsible for the administration of lawyers.

On 20 March 2006, the ACLA issued a Guiding Opinion on Lawyers Handling Mass Cases (Guiding Opinion) to ensure that "mass cases" do not "threaten social stability".[11] Lawyers have to follow the Guiding Opinion, or they will be punished by either the ACLA or, if the violations are deemed to have resulted in "adverse consequences", by the judicial authorities.[12]

The Guiding Opinion defines "mass cases" as cases involving 10 or more plaintiffs who have initiated a collective lawsuit or a series of legal proceedings on a common matter.[13] Before undertaking a "mass case", the case has to be collectively discussed within a law firm and approved by at lease three partners. The director of the law firm bears the sole responsibility for overseeing and supervising the lawyers handling a mass case.[14] Only "politically-qualified lawyers" – those who follow the instructions from the Chinese Communist Party – are allowed to handle "mass cases", in cooperation with at least one more lawyer of similar "qualities".[15] Lawyers handling "mass cases" need to promptly report such cases to the local lawyers association.[16] Lawyers associations have the authority to put forward suggestions for the case strategy, provide guidance on "mass cases" and must promptly share information on so-called major "mass cases" with the judicial authorities.[17] The law firm has to keep a "complete", "detailed", "orderly" and "tidy" record of the case and promptly report to the lawyers association after a "mass case" has concluded.[18] Lawyers should not encourage their clients to participate, or participate themselves, in petitioning government offices, and they should handle contacts with foreign organizations and media with caution.[19]

These rules apply not only to litigation but also to other forms of professional service, such as providing legal advice for mediation or conciliation.[20]

In today's China, "mass cases" are most commonly about confiscation of farmland, forced evictions, restructuring of enterprises resulting in unemployment, environmental pollution or other public interest cases. Lawyers who have taken up "mass cases" are often warned by the authorities to be cautious or to refrain from pursuing them altogether.

POLITICAL PRESSURE FROM JUDICIAL AUTHORITIES

The violence that erupted in Urumqi, the capital of the Xinjiang Uighur Autonomous Region (XUAR), on 5 July 2009, resulted in 197 deaths and more than 1,600 injured according to the latest official toll. At a press conference on 4 August, the authorities claimed to have

detained 718 individuals and arrested 83 people.[21]

Sources in China have also told Amnesty International that the Beijing judicial authorities have sternly warned a number of human rights lawyers, through the law firms where they are employed, not to take on any cases related to the unrest in the XUAR. Such comments and intimidation further threaten the likelihood of the detainees receiving fair trials.

On 8 July, Beijing Municipal Justice Bureau issued a circular to all law firms and subordinate judicial authorities in the municipality as well as the Beijing Lawyers Association, requesting them to "defend national unity and ethnic solidarity" and therefore "handle any legal consultation and taking on cases related to the unrest in the XUAR with caution" and to refrain from giving comments to the media or through the internet that could jeopardize "the handling of the cases". Before taking on these cases, partners of law firms have to "collectively study, handle with caution and report the cases promptly to the judicial authorities" as well as accept the "monitoring and guidance" of the judicial authorities.[22]

DISBARMENT OF HUMAN RIGHTS LAWYERS

There are more than 156,000 lawyers and 14,000 law firms in China but only a small proportion take the risk of representing victims of human rights violations. These lawyers have defended and provided legal aid to Tibetans who were detained in connection with the March 2008 protests, Falun Gong practitioners, human rights defenders detained for peacefully exercising their freedom of expression, families of victims of the Sichuan earthquake, families of victims of the tainted milk powder scandal and other public interest cases. Some of them have called for democratic election of the leadership of the Beijing Lawyers Association, including its executive committee, chairperson and the president of its supervisory board. The Beijing Lawyers Association is a local branch of the ACLA.

The authorities' control over the professional licenses of lawyers and law firms is a major deterrent to lawyers taking on cases which would likely lead to prompt official reprisal. Without a license, lawyers are restricted in their ability to represent those seeking to obtain justice and redress for violations of their human rights. Chinese law allows Chinese citizens to act as legal representatives without a lawyer's license. There are, however, limitations on what citizens can do in taking up lawsuits, for example, they are prohibited from charging a fee. In criminal procedures, citizens do not have the right to access detainees, initiate investigations and gain access to court documents without the approval of the court. Lawyers have these rights and can legitimately charge legal fees for doing legal work.

THE ANNUAL LICENCE RENEWAL SYSTEM BEFORE JUNE 2008

Since the mid 1990s, the Chinese authorities have been using the annual registration of lawyers' license to control the work of lawyers. Under the requirements of two 1996 Ministry of Justice regulations (Methods for the Management of Lawyers' Professional Licenses[23] and Methods for the Management of the Registration of Law Firms[24]) lawyers and law firms had to submit to the local judicial department a number of documents to support their application for annual renewal of their licenses, for example, a summary of their work over the past year and a report of how the lawyers had complied with professional ethics and discipline. The local justice bureau then reviewed the documents and issued their opinion before transferring the application to a higher level for license renewal approval. If approval for re-registration was denied, the professional license of lawyers became invalid and law firms were not allowed to continue their business. There was no appeal procedure for the authorities' denial of re-registration of the licence of law firms and lawyers. Over the years, the authorities have disbarred many human rights lawyers including some internationally known such as, Li Jianqiang, Zhang Jiangkan, Guo Guoting, Tang Jingling, Guo Yan, Teng Biao, Zheng Enchong and Gao Zhisheng.

CURRENT ANNUAL ASSESSMENT SYSTEM

In 2008, with the amendments to the Law of Lawyers,[25] the Ministry of Justice replaced the annual registration system with a system of annual assessment of lawyers and law firms by issuing two regulations: Methods for the Management of Law Firms[26] and Methods for the Management of Lawyers' Practice.[27] Under this system, lawyers and law firms are required to have their licences to practice law assessed every year.

Judicial authorities at the local level formulate their own rules to codify the assessment criteria and process. In Beijing, for example, the assessment of law firms and lawyers were conducted separately this year between mid-April to end of May. To pass the assessment in Beijing, law firms had to first conduct a self-assessment and submit their findings to the judicial authorities who then gave their own assessment on the law firms based on reviewing the self-assessment and an on-site assessment conducted by the judicial authorities. Documents law firms had to submit to the judicial authorities included reports on their finances in the past year; reports on their internal management including, among other things, details of collective discussions on "mass cases" (see above), reporting and requesting of instructions (from higher authorities) on "important and difficult" cases, and; their assessment report on each of the lawyers employed by the firm. To be allowed to continue their business, the firms needed to pass all rounds of assessment. If the judicial department failed a law firm in the initial review of documents or based on the on-site assessment, it had to provide the reasons for the failure, give some time to the firm to rectify the situation and then reassess it. Failure to meet the deadlines set for the assessment would automatically lead to a law firm's license being invalidated and subsequent termination of the firm's operations.[28]

Similarly, lawyers based in Beijing were required to undergo annual assessment from mid April to end of May, first by the law firm they work for, then by the Beijing Lawyers Association. There were eight criteria upon which lawyers were reviewed. Among them, there was a clause which provided for the Beijing Lawyers Association to consider "any other criteria that they deem necessary for the assessment." The eighth criteria allowed the Beijing Lawyers Association to arbitrarily decide whether or not a lawyer passes the review. Only those lawyers who passed the two phases of assessment – (1) by the law firm where they are employed and (2) by the Beijing Lawyers Association – were allowed to keep their professional licenses. If a law firm decided to fail its own lawyers and refused to support their re-registration, it had to provide reasons for its decision with supporting documents and submit them to the municipal lawyers' association together with the license of the lawyers. The judicial department then invalidated the license. Lawyers who failed the assessment by the lawyers' association would first have been given some time to rectify problems, be reassessed, and would only have been allowed to re-register their professional license if they passed the assessment. However there is no requirement for the lawyers' association to make the reasoning of their decisions known to the lawyer in question or to provide justifications for failing a lawyer's annual assessment. There is also no mechanism for lawyers to appeal if they disagree with the decisions of the law firms and the lawyers' association.[29]

OFFICIAL MANIPULATION OF THE ANNUAL ASSESSMENT SYSTEM

This year, prior to the deadline of the annual review, justice bureaus and lawyers associations in Beijing, Heilongjiang and Guangxi threatened several law firms that unless they dismissed individual human rights lawyers they would fail their annual review (see the examples below).

The reasons given by the authorities to explain why the lawyers and law firms failed to pass the review were not related to professional conduct. Rather, they included advocating for the democratic election of Beijing Lawyers Association's leadership and taking on "mass cases" of public interest without reporting to the local justice bureau.

TARGETING LAW FIRMS

This year, at the time of publication, at least the following two law firms have not yet passed the annual review and as a result all lawyers employed by them including seven who have been actively involved in cases on behalf of victims of human rights violations were affected. For the most part, the activist lawyers only represent a portion of the employees of any of these law firms which can have varied clientele lists and expertise:

- Beijing Anhui Law Firm

  The firm employed, among others, **Cheng Hai**, **Tang Jitian**, **Yang Huiwen**, **and Tong Chaoping**. Many of these lawyers called for a democratic election in the Beijing Lawyers Association. Cheng Hai and Yang Huiwen ran for the position of the chairperson of the lawyers association. Their names were eventually deleted from the ballot. They also represented victims of land grabs, detainees of Re-education through Labour which is a system of administrative detention in which inmates could be subjected to detention for up to four years without going through a trial, Falun Gong practitioners and victims of the tainted milk powder scandal. The Beijing Justice Bureau failed the law firm in the initial assessment. While the law firm is still awaiting the judicial authorities' re-assessment of the "issues" previously raised by them, including the "failings of its internal administration and financial system", "incomplete case records", as well as to provide case documents of a Sichuan Falun Gong case taken on by Tang Jitian and another Falun Gong case taken on by Cheng Hai in Hebei province, the Beijing Judicial Bureau told the law firm manager that there is no time limit for the firm's assessment.

  Sources in China told Amnesty International that the Beijing Justice Bureau has pressured Liu Guitao and Zhu Guangming, partners of the law firm, to quit the firm. On 18 August, the two partners formally left the firm. This act has placed the firm on the edge of shut down since article 15 of the Law on Lawyers provides a minimum requirement of three partners to set up a law firm. The Beijing Justice Bureau ordered the firm to find a minimum of two partners by 28 August or the firm will be shut down. Upon closure of the law firm, the remaining lawyers will have to find another law firm to employ them so as to keep their professional licences. These lawyers expected difficulties in finding other employers willing to challenge the judicial authorities and hire them.

- Beijing Shun He Law Firm

  The firm employed **Liu Wei** and **Wen Haibo**. Both called for a democratic election in the Beijing Lawyers Association, represented Falun Gong cases and signed an open letter offering legal assistance to detainees during the unrest in March 2008 in the Tibet Autonomous Region and neighbouring provinces. The Beijing Justice Bureau failed the law firm during its initial assessment. To date, the law firm is awaiting the judicial authorities' re-assessment of the "issues" previously raised by them.

INDIVIDUAL HUMAN RIGHTS LAWYERS

As of the time of publication, at least 10 individual human rights lawyers listed in the following paragraphs have not yet passed the annual review.

- **Jiang Tianyong**, **Li Chunfu**, **Li Heping**, **Li Xiongbing**

  All were previously intimidated or physically harassed (see above) and were lawyers of the Beijing Globe-Law Firm, which separately passed an individual firm assessment earlier in the year. On 9 July however, the Beijing Justice Bureau announced that these six lawyers had failed to pass the assessment. According to the announcement, Jiang Tianyong's license was invalidated in accordance with articles 23(1)(3) and 23(1)(4) of the Methods for the Management of Lawyers' Practice. These provisions authorize the local justice bureaus to invalidate lawyers' licenses if "their law firms dissolve the contract with them or the license of their law firms have been invalidated and they are unable to be employed by another law firm within six months"; or for "any other reasons that have ended their practicing of law as lawyers".[30] On the same day, the justice bureau also announced that Beijing Globe-Law Firm's Li Heping, Li Xiongbing, Li Chunfu, Wang Yajun and Guo Shaofei (see below for more details on Wang Yajun and Guo Shaofei) will not have their licences "re-registered" because they had "failed their assessments". The Bureau provided no further documentation on the reasons for failing these six lawyers.

  Prior to the announcement made by the Beijing Justice Bureau, these lawyers tried to seek clarifications from their law firm and the justice bureau for the reasons for "failing the assessment". The manager of the law firm told these lawyers that they had to fail them in the assessment under pressure from the judicial department. But when asked by these lawyers, officials at the judicial department said that it was their law firm who made the decision to fail them.

  The law firm manager told Li Chunfu that he had failed the assessment because the Chengdu Intermediate People's Court had complained about him. However, Li Chunfu claimed that he was never aware of this "complaint" and had never received any documents or oral warnings. The only explanation for this "complaint" that Li Chunfu could think of was the Falun Gong case he had in Chengdu in October 2008. At that time, 15 lawyers wrote a complaint letter to the Chengdu Intermediate People's Court and the chief of Chengdu Public Security Bureau expressing concerns that there were serious procedural irregularities in handling the case. Li Chunfu believes that the alleged complaint against him was in retaliation for this complaint by the 15 lawyers.

  The law firm manager also told Jiang Tianyong that his contract with the law firm had already expired at the end of 2008 and therefore the law firm had not submitted his assessment to Beijing's judicial authorities, despite the fact that the law firm had extended his employment contract in December 2008 for three more years.

- **Xie Yanyi**

  He was previously a lawyer of the Beijing Gong Xin Law Firm. At end of May 2009, the Beijing judicial authorities told the manager of the law firm that it failed its assessment

because of its poor management of the behaviour of Xie Yanyi. He represented Falun Gong practitioners, victims of forced evictions and land seizure, detainees of Re-education Through Labour, called for a democratic election in the Beijing Lawyers Association's leadership and – during a lawyers' meeting on 17 May 2009 which discussed the physical attack on two lawyers in Sichuan – called for lawyers to protest such violence. The judicial authorities told the manager that Xie Yanyi's behaviour was too "radical" and hence "inappropriate" for lawyers. They ordered the manager of the law firm to dismiss him. If not, the law firm would not be able to pass its assessment and all lawyers hired by the firm would be affected. As of the time of writing this submission, Xie Yanyi has not yet received any official documentation to clarify the status of his licence.

- **Zhang Chengmao**

  He is a lawyer of Beijing Anyuan Law Firm and has represented victims of forced evictions and Sanlu tainted milk, Falun Gong detainees and called for a democratic election in the Beijing Lawyers Association's leadership. The law firm did not submit his assessment to the judicial authorities and did not provide an explanation. He has not yet received any official documentation on the status of his licence.

- **Zhang Lihui**

  He is a partner of Beijing G&G (Giant & Goal) Law Firm has represented Falun Gong detainees, called for a democratic election of the Beijing Lawyers Association's leadership and ran for the election of the president of the association's supervisory board but his name was deleted from the ballot. Amnesty International is not aware of the circumstances under which he has failed to pass the assessment as he has not yet received any official documentation on the status of his licence. Other partners of the law firm are under political pressure to remove him from the firm.

- **Zhang Xingshui**

  A lawyer of Beijing Kingdom Law Firm, he has taken up many cases of mass public interest including forced evictions and land seizure without adequate compensation. Amnesty International is not aware of the circumstances under which he has failed to pass the assessment as he has not yet received any official documentation on the status of his licence.

- **Wei Liangyue**

  A lawyer in the Heilongjiang Jiaodian Law Firm, he has represented many Falun Gong detainees and counselled them to plead not guilty to charges of "using a heretical organization to undermine implementation of the law" under article 300(1) of China's Criminal Law. In retaliation for his defence of Falun Gong practitioners, local police placed him under criminal detention on suspicion of "gathering a crowd to disturb social order" under article 209(1) of China's Criminal Law between 28 February and 30 March 2009. (See below for more details.) The judicial authorities failed his assessment because he is currently released on bail pending investigation.

- **Sun Wenbing**

  A lawyer of Xin He Law Firm in Liaoning province, he has represented many Falun Gong detainees. His law firm and the judicial authorities have not yet provided an explanation of the circumstances under which he has failed to pass the assessment. His professional licence is currently held by the judicial authorities.

The following lawyers failed to pass the assessment by its annual deadline but were granted a pass after they submitted a written statement to the Beijing Justice Bureau guaranteeing not to take on any more "sensitive cases."

- **Li Jinglin**

  On 16 June, he was warned by a Beijing Justice Bureau official to withdraw from Sanlu tainted milk cases and asked to stop working with some human rights lawyers including Tang Jitian. Li Jinglin has provided free legal service to victims of tainted milk, represented Falun Gong practitioners and called for democratic election of the Beijing Lawyers Association's leadership. Beijing Justice Bureau previously withheld his license until he found a law firm to hire him. Sources in China told Amnesty International that the Bureau has given warnings to some law firms in Beijing not to hire him. At the time of publication, Li Jinglin has passed the assessment and found an employer after he provided a written statement to the Beijing Justice Bureau promising not to take on any "sensitive cases".

- **Wang Yajun** and **Guo Shaofei**

  During the week of 22 June, the manager from their employer, Beijing Globe-Law Firm, asked the two lawyers to write a statement, agreeing not to be involved in "sensitive cases", including Falun Gong cases, in exchange for passing their annual assessments. Upon submission of such a written statement to Beijing Justice Bureau, the judicial authorities granted approval of Guo Shaofei's annual assessment at the end of July. Beijing Justice Bureau recently ordered Wang Yajun to quit his current law firm, and to promise not to take up any "sensitive cases" including Falun Gong. The Justice Bureau allowed his current employer to keep his professional license until he has left the firm so that he is unable to take on any new cases, in exchange for passing his annual assessment. At the time of publication, Wang Yajun has not yet found a new employer.

ADMINISTRATIVE SANCTIONS ON LAW FIRMS AND LEGAL ORGANIZATIONS

Apart from the regulatory curbs on "mass cases" and the annual assessment as a tool of controlling the work of lawyers, the Chinese authorities impose political pressure on law firms and legal organizations involved in human rights cases by imposing arbitrary administrative sanctions such as imposing fines and ordering the firms to shut down or to freeze their operations.

OPEN CONSTITUTION INITIATIVE

On 14 July 2009, a Law Research Centre affiliated with the Beijing-based company-registered as the **Open Constitution Initiative** (OCI, also known as *Gongmeng* in Chinese), received notices from the national and Beijing taxation bureaus ordering it to pay a fine of more than 1.4 million yuan (approximately USD 200,000) for tax violations, an amount that is five times the taxes the authorities claimed OCI owed. Three days later, on 17 July, representatives from the Beijing Civil Affairs Bureau came to OCI's office and confiscated computers and other office machines, as well as files and documents. They also delivered notification of an official decision to shut down the law research centre, saying that it is not allowed to operate because it had not registered as a civil society organization.

Two hearings were conducted behind closed doors on 24 and 30 July for OCI to appeal the administrative decision of the national and Beijing tax bureaus. Beijing police stopped many petitioners in support of OCI on the street leading to the hearing venue and placed human rights lawyers and activists Jiang Tianyong, Teng Biao and Guo Yushan under house arrest to prevent them from attending the hearing.

In mid August, Beijing Haidian District Industry and Commerce Bureau shut down OCI accusing it for providing "false data" when it registered as a company and that its activities were not those of a commercial enterprises.

Six police officers took Xu Zhiyong and Zhuang Lu, a staff member of OCI, away from their home in the early morning of 29 July. It was not until 31 July that both of them were confirmed detained by the police in Beijing Municipal No. 1 Detention Centre on suspicion of "tax evasion" under article 201 of China's Criminal Law. They were formally arrested in mid August. However, the police failed to send any legal documentation on the arrest to either their lawyers or families.

On 10 August, OCI's lawyer Li Xiongbing and researcher Wang Gongquan went to the national and Beijing tax bureaus to pay the fine after they raised the money. The authorities refused to accept it and claimed that Li Xiongbing and Wang Gongquan were not the legal

representatives of OCI and that they failed to present an authorization letter signed by OCI's detained legal representative Xu Zhiyong.

Xu Zhiyong was released on 23 August and Zhuang Lu was reportedly released on 22 August but at the time of publication, Amnesty International has not been able to verify her release.[31] At the time of publication, it remains unclear if the "tax evasion" charges were dropped or if the two were only released on bail pending investigation.

Since its establishment in 2003, OCI has provided legal assistance to victims of human rights violations, including those subjected to forced evictions and families of victims of the 2008 tainted milk scandal. OCI also recently used the national Regulation on Open Government Information to request various government branches to be transparent about the spending of public money.

BEIJING YITONG LAW FIRM

On 17 March 2009, **Beijing Yitong Law Firm** received a notice from the Haidian District Justice Bureau in Beijing, ordering them to close the law firm for six months beginning 13 March 2009 as well as to turn in the licenses of the firm and of all their lawyers. The Haidian District Justice Bureau said in the notice that the firm had violated the law by allowing a lawyer, Li Subin, to work without a professional licence.

Managing partner of the firm Li Jinsong has called the charge absurd because lawyer Li Subin has a license to practice in another city in China and had filed an application to transfer it to Beijing. Li Jinsong thought the real reason for shutting down the law firm was their call for a democratic election of the Beijing Lawyers Association's leadership and their public criticism of the courts' and judicial authorities' handling of some cases, including that of Yang Jia, a young man executed for killing six policemen. According to a Los Angeles Times report, Shanghai police told a 7 July news conference that Yang Jia had carried out the attack in revenge.[32] He had previously sought compensation for ill-treatment by police while detained for riding an unlicensed bicycle on 15 October 2007. Despite uncertainty as to his state of mind, the court ruled that Yang was mentally competent during the attack. The authorities kept Yang Jia's mother forcefully in a psychiatric hospital to prevent her from appointing a lawyer for her son.

Apart from the Yang Jia's case, Beijing Yitong Law Firm has been involved in many human rights cases since their establishment in 2004 including: the case of Hu Jia, a well known human rights activist who worked on HIV/AIDS and disseminated information of human rights abuses through his blog before his imprisonment in 2008; the case of Chen Guangcheng, a blind self-taught legal activist, imprisoned in 2006 after exposing violent implementation of family planning policies and forced abortions in Linyin in Shangdong province; and sued the railway department in an attempt to push for greater government information transparency.

BEIJING ZHISHENG LAW FIRM

In 2006, the **Beijing Zhisheng Law Firm** directed by human rights lawyer Gao Zhisheng was also ordered to shut down by the judicial authorities after he issued a public letter to Chinese president Hu Jintao calling for an end to the persecution of Falun Gong practitioners. The stated reason for the shutdown was discrepancies between the law firms' address in the official registration record and its actual location. The judicial authorities refused to accept

Gao Zhisheng's explanation that they had only moved less than two months previously and had not yet updated the address in the registrar.

RECOMMENDATIONS

Amnesty International calls on the Chinese authorities to allow the development of an independent legal profession so that lawyers and legal activists are able to carry out their legal work without harassment, intimidation, and fear of detention, torture and other ill-treatment or criminal prosecution. In particular, Amnesty International urges the Chinese authorities to act immediately to:

- Stop the harassment, intimidation, arbitrary detention, ill-treatment and imprisonment of human rights lawyers and legal activists for their peaceful work;

- Make the criteria and process for renewing lawyers' and law firms' licenses transparent and base it solely on professional qualifications and conduct;

- Stop using the annual review system to retaliate against or impede these lawyers and law firms and reinstate the professional license of law firms and human rights lawyers that have been suspended or invalidated for political reasons.

- Revise China's Criminal Procedure Law,[33] All-China Lawyers Association's Guiding Opinion on Lawyers Handling Mass Cases and other laws and regulations that restrict lawyers in choosing their own cases and clients;

- Ensure that the All-China Lawyers Association and its local branches are independent from the authorities so that they may effectively represent the interests of the legal profession in line with international human rights standards, including the General Comment No. 13 of the International Covenant of Civil and Political Rights[34] which China signed in 1998 and has repeatedly stated the intention to ratify, and the United Nations Basic Principles on the Role of Lawyers.[35]

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[2] "More than 150,000 lawyers practicing in China; 3,415 members of Chinese People's Political Consultative Conference at all levels" [全国执业律师已超过 15 万　各级人大代表政协委员达 3415 人], Legal Daily online version [法制日报], 15 August 2009, http://www.legaldaily.com.cn/0801/2009-08/15/content_1138659.htm, accessed 17 August 2009.

[3] Unit of Administration of Lawyers' Work in Beijing Municipality Justice Bureau [北京市司法局律师工作管理处], Emergency Notice on the Provision of Legal Service to Crimes of "Beating, Smashing, Looting or Arson" in Urumqi by All Lawyers of the Municipality [关于要求全市律师慎重为乌鲁木齐市"打砸抢烧"严重暴力犯罪事件提供法律服务的紧急通知], promulgated on 8 July 2009, para. 2, available at: http://xkyw.bjsf.gov.cn/communion/bulletinAction.do?method=read&id=10284&returnback=listByCurrentUser&userread=yes&pgctrl.logingin=i, accessed 13 July 2009. (Unit of Administration of Lawyers' Work in Beijing Municipality Justice Bureau, Emergency Notice on the Provision of Legal Service to Crimes of "Beating, Smashing, Looting or Arson" in Urumqi by All Lawyers of the Municipality)

[4] United Nations Human Rights Committee, International Covenant on Civil and Political Rights General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14), available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument, accessed 25 August 2009. Para. 9 provides that: "… Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter."

[5] The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: http://www2.ohchr.org/english/law/lawyers.htm, accessed 25 August 2009.

[6] National People's Congress [全国人民代表大会], Criminal Law of the People's Republic of China (1997) [中华人民共和国刑法(1997 修订)], promulgated on 14 March 1997, effective on 1 October 1997, amended on 25 December 1999, 31 August 2001, 29 December 2001, 28 December 2002, 28 February 2005, 29 June 2006 and 28 February 2009, available at: http://www.6law.idv.tw/6law/law-gb/%E4%B8%AD%E8%8F%AF%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9C%8B%E5%88%91%E6%B3%95.htm#a151, accessed 25 August 2009.

[7] Standing Committee of the National People's Congress [全国人民代表大会常务委员], Law on Lawyers of the People's Republic of China (2007) [中华人民共和国律师法 (2007 年修订)], promulgated on 28 October 2007, effective on 1 June 2008, available at: http://news.xinhuanet.com/newscenter/2007-10/28/content_6966833.htm, accessed 25 August 2009. (Law on Lawyers)

[8] Gao Zhisheng's account of the torture is available online at: http://www.hrichina.org/public/contents/press?revision_id=147981&item_id=126636.

[9] All-China Lawyers' Association [中华全国律师协会], Constitution of the All-China Lawyers' Association [中华全国律师协会章程], adopted on 28 April 1999, revised on 21 May 2002 and 26 October 2008, art. 12, available at: http://sfj.xxz.gov.cn/936.html, accessed 13 July 2009. (Constitution of the All-China Lawyers' Association)

[10] Constitution of the All-China Lawyers' Association, art. 4.

[11] Standing Committee of All-China Lawyers' Association [中华全国律师协会常务理事会], Guiding Opinion on Lawyers Handling Mass Cases [关于律师办理群体性案件指导意见], adopted on 20 March 2006, preamble, available at: http://www.chineselawyer.com.cn/pages/2006-5-15/s34852.html (in Chinese) and http://www.hrw.org/en/node/11104/section/12 (an unofficial English translation by Human Rights Watch), both accessed on 13 July 2009. (Guiding Opinion on Lawyers Handling Mass Cases)

[12] Guiding Opinion on Lawyers Handling Mass Cases, art. 4(8).

[13] Guiding Opinion on Lawyers Handling Mass Cases, art. 1(1).

[14] Guiding Opinion on Lawyers Handling Mass Cases, art. 3(2).

[15] Guiding Opinion on Lawyers Handling Mass Cases, art. 3(3).

[16] Guiding Opinion on Lawyers Handling Mass Cases, art. 3(1).

[17] Opinion on Lawyers Handling Mass Cases, arts. 4(1), 4(7) and 4(9).

[18] Guiding Opinion on Lawyers Handling Mass Cases, arts. 3(6) and 3(7).

[19] Opinion on Lawyers Handling Mass Cases, arts. 2(4), 2(5) and 3(4).

[20] Guiding Opinion on Lawyers Handling Mass Cases, arts. 3(3) and 3(4).

[21] "Police detain 718 suspects in connection with Urumqi riot", Xinhuanet, 4 August 2009, http://news.xinhuanet.com/english/2009-08/04/content_11825993.htm; "83 Urumqi riot suspects arrested", Xinhuanet, 4 August 2009, http://news.xinhuanet.com/english/2009-08/04/content_11825781.htm, both accessed 7 August 2009.

[22] Unit of Administration of Lawyers' Work in Beijing Municipality Justice Bureau, Emergency Notice on the Provision of Legal Service to Crimes of "Beating, Smashing, Looting or Arson" in Urumqi by All Lawyers of the Municipality.

[23] Ministry of Justice [司法部], Methods for the Management of Lawyers' Professional Licenses [律师执业证管理办法], Order No 46 [司法部令第 46 号], promulgated on 25 November 1996, effective on 1 January 1997, arts. 12 & 13, available at: http://www.gx.xinhuanet.com/misc/2006-09/27/content_8141782.htm, accessed 13 August 2009.

[24] Ministry of Justice [司法部], Methods for the Management of the Registration of Law Firms [律师事务所登记管理办法], Order No. 41 [司法部令第 41 号], promulgated on 25 October 1996, effective on 1 January 1997, arts. 21, 22, 23 and 25, available at: http://www.legalinfo.gov.cn/big5/lsgzgls/2003-03/31/content_21532.htm, accessed 13 August 2009.

[25] Law on Lawyers, arts. 23, 24, 46(4).

[26] Ministry of Justice [司法部], Methods for the Management of Law Firms [律师事务所管理办法], Order No. 111 [司法部令第 112 号], promulgated and effective on 18 July 2008, arts. 42 and 43, available at: http://www.legalinfo.gov.cn/moj/2008zcfg/2008-07/22/content_906515.htm, accessed 19 June 2009.

[27] Ministry of Justice [司法部], Methods for the Management of Lawyers' Practice [律师执业管理办法], Order No. 112 [司法部令第 112 号], promulgated and effective on 18 July 2008, art. 40, available at: http://www.chinalaw.gov.cn/article/fgkd/xfg/gwybmgz/200902/20090200128182.shtml, accessed 19 June 2009. (Methods for the Management of Lawyers' Practice)

[28] For more details of the assessment of law firms in Beijing, see Beijing Municipal Bureau of Justice [北京市司法局], Beijing Municipal Bureau of Justice's Notice on the Commencement of the Annual Assessment of Law Firms in Beijing in 2009 [北京市司法局关于开展全市律师事务所 2009 年度考核工作的通知], Order No. 120 (2009) [京司发[2009]120 号], 14 April 2009, available at: http://www.bmla.org.cn/bjlawyers2/news/download.jsp?filePath=web_manager/infocenter/annexfiles/IC04000008632.doc, accessed 23 June 2009.

[29] For more details of the assessment of lawyers in Beijing, see Beijing Lawyers Association, [北京市律师协会], Beijing Lawyers Association's Notice on the Commencement of the Annual Assessment of Lawyers in Beijing in 2009 [北京市律师协会关于开展 2009 年度律师执业考核工作的通知], 13 April 2009, available at: http://www.bmla.org.cn/bjlawyers2/news/download.jsp?filePath=web_manager/infocenter/annexfiles/IC04000008634.doc, accessed 23 June 2009.

[30] Methods for the Management of Lawyers' Practice, arts. 23(1)(3) and 23(1)(4).

[31] Henry Sanderson, "China legal activist freed, but may face tax case", Associated Press, 24 August

2009, http://www.google.com/hostednews/ap/article/ALeqM5hnJJutQi9HLMnQqcoK3ovm6AbHvAD9A90ET00, assessed 25 August 2009.

[32] Don Lee, "Death sentence in rampage sparks debate in China", *Los Angeles Times*, 2 September 2008.

[33] National People's Congress [全国人民代表大会], Criminal Procedure Law of the People's Republic of China (1996) [中华人民共和国刑事诉讼法 (1996 修订)], promulgated 17 March 1996, effective 1 January 1997, available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384067.htm (in English) and http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2003-01/21/content_699668.htm (in Chinese), accessed 25 August 2009.

[34] United Nations Human Rights Committee, International Covenant on Civil and Political Rights General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14), available at: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument, accessed 25 August 2009. Para. 9 provides that: "… Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgement without any restrictions, influences, pressures or undue interference from any quarter."

[35] The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: http://www2.ohchr.org/english/law/lawyers.htm, accessed 25 August 2009.

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