



# JUSTICE DENIED

HARASSMENT OF SICHUAN  
EARTHQUAKE SURVIVORS  
AND ACTIVISTS

**AMNESTY  
INTERNATIONAL**



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Cover photo: A building damaged during the earthquake in May 2008, Beichuan county, Sichuan province, China. Copyright © private

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# MAP OF CHINA



# INTRODUCTION

**“I want to seek justice for the dead students. Corruption is rampant in China. The children were still so innocent and suddenly they passed away. Some of their bodies are still buried under the rubble and we will never find them. That’s why it is so heartbreaking for many parents. Except the school building, other buildings in Beichuan county did not collapse during the earthquake. What kind of earthquake was this?”**

G, father of a 15-year-old student who died at Beichuan Middle School<sup>1</sup>

## BACKGROUND

On 12 May 2008, at 2:28pm, a devastating earthquake of an 8.0<sup>2</sup> magnitude hit Wenchuan county, in China’s southwestern Sichuan province. Casualties and damage from the earthquake were reported across several provinces, including Sichuan, Gansu, Shaanxi and Yunnan. The earthquake was reportedly felt as far away as Beijing and Shanghai.<sup>3</sup> As of 22 March 2009, 50,095 aftershocks have struck the area,<sup>4</sup> of which 296 were of a magnitude higher than 4.0.<sup>5</sup>

The earthquake caused buildings to collapse and massive landslides. According to official figures, there were over 12,000 geological disasters,<sup>6</sup> and 8,700 places of potential risk. The quake also caused natural dams creating over 30 lakes, which are in danger of overflowing and causing flooding.<sup>7</sup>

Chinese officials estimated the economic loss caused by the earthquake at 845.1 billion yuan (US\$123.6 billion), and Sichuan province accounts for 91.3 per cent of the total loss, 5.8 per cent is from Gansu province and 2.9 per cent from Shaanxi province.<sup>8</sup> Damages of essential housing such as schools and hospitals account for 20.4 per cent of the total economic loss whereas the destruction of basic infrastructure including roads and flyovers amounts to 21.9 per cent of the total loss.<sup>9</sup>

More incalculable was the tremendous human toll. The latest official figures, as of 25 September 2008, puts the number of deaths at 69,227 with 17,923 individuals still missing and 374,643 individuals injured.<sup>10</sup> The government released a list of 19,065 identified victims who were killed in the earthquake in November 2008.<sup>11</sup> In its first-ever National Human Rights Action Plan, the government also pledged to publicize the list of the dead and the missing by 2010, which according to the Plan, is an effort to show respect to the victims.<sup>12</sup>

A particularly heart-rending aspect of the disaster was that many of the dead and injured were school children. Given the time of the earthquake, children were at school, away from their parents. Many of the parents and survivors of the earthquake have claimed that school buildings suffered disproportionately high damage, compared with other official buildings and residences. As a result, the number of students who died in their classrooms during the earthquake is a sensitive topic for the Chinese officials as they face uproar over construction quality and corruption from grieving parents whose children were crushed. One year after the earthquake, there is still no official toll of students killed. In March 2009, Sichuan's executive vice-governor Wei Hong said in a press conference on the sidelines of the annual National People's Congress that the calculation of casualty figures for students involved a complicated checking and verification process and therefore the final toll would come out only when the final overall death toll was calculated.<sup>13</sup>

On 13 March 2009, an international acclaimed artist Ai Weiwei who co-designed Beijing's Olympic National Stadium (known as the Bird's Nest) posted on his blog a list of children killed in the earthquake as well as transcripts of conversations he and others have had with government officials who have refused to cooperate with their investigation. He also at the time encouraged basic information concerning dead students to be sent to him for posting on his blog. As of 18 April 2009, this list had 5,628 children's names, along with name of the schools they were in, and some with name of parents and their contact information. After initial screening and verification, Ai Weiwei's blog has confirmed 4,827 names.<sup>14</sup> This rolling list and other postings deemed too sensitive by the service provider have frequently been removed.

In the early stages after the earthquake, the Chinese authorities were praised for their openness in allowing greater media access for journalists, both foreign and domestic, to enter the quake-damaged areas and report stories in detail. However, the authorities reverted to traditional media control soon after reports of controversial topics like the misuse of relief funds and materials by local officials, the collapse of a large number of school buildings causing the death of many students and the lack of advance warning from earthquake-monitoring departments. The Foreign Correspondents Club of China has listed 18 cases involving dozens of foreign journalists and photographers who were prevented from reporting in the region, and in some cases journalists had their video footage confiscated or were briefly detained for attempting to cover efforts by parents to hold officials responsible for the collapse of the schools.<sup>15</sup>

For months, mourning parents' pleas for justice and accountability have met with frustration. Their protests were dispersed by the police. Their petitions were ignored by local governments. Their petitions to higher authorities were intercepted. Local courts dismissed their lawsuit against government officials and construction contractors without a hearing.

They were warned not to pursue any further redress for the deaths of their children and were arbitrarily detained for disobeying this warning. Some of them told Amnesty International that they had no way out and wanted to end their lives so that they could be together with their children again. Parents who are petitioning and seeking to bring complaints before civil and criminal courts are being deprived of their civil and political rights including arbitrary detention, violation of freedoms of movement, assembly and expression as well as the persecution of activists trying to assist these parents.

Amnesty International calls on the Chinese authorities to take immediate action to ensure the justice system works for parents and survivors by allowing them unhindered access to independent and impartial tribunals and lawyers and activists who have offered assistance.

### “TOFU DREGS” CONSTRUCTION?<sup>16</sup>

While official figures of damaged school buildings varied, it is certain that a large number of school buildings were damaged or collapsed during the earthquake. In Sichuan province alone, the official statistics of the number of schools needing reconstruction was given as approximately 3,340 in November 2008.<sup>17</sup> In December, the figure of damaged schools in Sichuan province went up to nearly 14,000.<sup>18</sup> In March 2009, this figure became 9,145.<sup>19</sup>

Some of these school buildings collapsed entirely but other buildings in the same area or adjacent to the collapsed schools did not and survived the quake. Cable News conducted a review series on the aftermath of the earthquake in April 2009. The three-minute video clip in its 21 April program showed footage of the ruins of Beichuan Middle School but buildings right behind it stood firm.<sup>20</sup> Many parents whose children were buried in the ruins claimed that the school buildings were unsafe, and that corrupt officials or builders pocketed money meant to construct stronger buildings. They also demanded that officials, school building designers and construction companies be held accountable for the death of their children.

Facing the question of school buildings' quality, Jiang Weixin, Minister of Housing and Urban-Rural Development, promised on 16 May 2008, four days after the earthquake that once rescue work was completed, an investigation would be held and those responsible for unsafe school buildings would be punished.<sup>21</sup> On 26 May 2008, Ministry of Education spokesperson Wang Xuming reiterated at a press conference the promise to severely punish the offenders if shoddy construction was the cause of the collapse of a single school building.<sup>22</sup> In September 2008, director of the National Wenchuan Earthquake Expert Committee Ma Zongjin acknowledged that a rush to build schools without respecting quality control in recent years may have led to the collapses of school buildings.<sup>23</sup> In December 2008, a Ministry of Education report was reportedly quoted during a briefing on the enforcement of the Law on Compulsory Education to the Standing Committee of the National People's Congress, China's highest law-making body, which said that in 2007, 2.48 per cent of the total area of primary and secondary school buildings in China had structural problems. With a total building area equal to 33.58 million square feet, 90 per cent of the structurally problematic square footage was located in rural areas in the central and western regions of the country, an area that includes the earthquake-damaged zone.<sup>24</sup>

Despite this official acknowledgement, authorities from the hardest-hit province denied correlations between the collapse of schools and shoddy construction. Sichuan executive vice-governor Wei Hong stated that the key and most important reason for the collapse was



the strong earthquake, citing studies conducted by the Tsinghua University and China Academy of Building Research, funded by the provincial government.<sup>25</sup> On 15 April 2009, Radio France Internationale reported that Beichuan's Party committee and the petitioning bureau of Beichuan county issued a joint directive which cited the above statement from Wei Hong as well as the decision by Sichuan Province Development Bureau that there would be no examination of the construction quality of collapsed buildings caused by the earthquake.<sup>26</sup>

## METHODOLOGY

The research for this report included interviews with parents whose children died during the earthquake, lawyers, legal experts, scholars and rights activists as well as news articles, official publications, and online materials in Chinese and English.

The research for this report was hindered because of limited access to the area by researchers, non-governmental organizations, independent monitors and journalists. The continued harassment of the victims has caused many to fear discussing their situation with outsiders. For the safety of all the interviewees, Amnesty International has omitted names and excluded information that can be used to identify these individuals.

# ARBITRARY DETENTION AND “BLACK JAILS”

Given the limited access to the region by independent observers and journalists, and the varied responses of local authorities including compensation payments accompanied by guarantees of further silence, it is impossible to know how many parents in total pursued investigations. A number of parents seeking investigations into what they called “tofu dregs” construction that they allege took the lives of their children, have been placed under arbitrary or unlawful detention.<sup>27</sup> Eight survivors included in this report have experienced “black jails” (*heilao*),<sup>28</sup> a term which refers to unofficial detention facilities, often budget hotels or hostels, but any facility that is not listed in or formally part of the detention system, in which Chinese citizens are locked up by the authorities without any legal process.<sup>29</sup> They were detained from between one to 21 days, without any warrants or notices to their families, at police stations, guest houses, farms or houses in a remote area away from their homes. Most of them were detained more than once. Among these detainees, the youngest was only eight years old.

F’s 15-year-old daughter died under the rubble of Juyuan Middle School in Dujiangyan and had blood, wounds and bruises all over her body when she was found five hours after the earthquake. As of the date of interview, F had been detained twice, once for seven and again for 10 days for organizing other parents to urge local officials to investigate the collapse of the schools.<sup>30</sup>

After recovering from the initial grief, F and many other parents went to the site of the collapsed school building every day to mourn their children and also to the office building of the county government. As the county government denied it was shoddy construction that had caused the collapse of the classrooms, F, together with approximately 200 other parents, gathered in front of the school to plan to bring their complaints to the higher authorities in Beijing. The group was dispersed by the police. The day after that gathering, some local police officers took F to the police station. While in the police station, approximately 10 unidentified individuals tried to persuade F that the earthquake alone caused the school to collapse but F would not agree. F was then taken to a farm in Qingchengshan and illegally detained for three days. She was then transferred to another “black jail” in Zhaogongshan and was kept there for another four days.<sup>31</sup>

After being unlawfully detained for seven days, F continued contacting the parents of other victims trying to seek justice for their children. She was then illegally detained for another 10 days at a “study class”, a form of illegal detention that officials employ to illegally deprive individuals of their liberty and conduct forced political education in order to change their behaviour. During those 10 days, F had nothing to do except to listen as she was repeatedly told that it was the earthquake that caused the collapse of the school building and therefore

the death of F's daughter and many other students.<sup>32</sup>

"My daughter died and I just wanted to seek justice for her. Why did the authorities treat me like this? They accused us of 'gathering a crowd to disturb public order'. We simply burn paper offerings to our children on the 12th each month. We dare not do anything. We are only marginalized people."<sup>33</sup>

M's 16-year-old son was a classmate of F's daughter in Juyuan Middle School. He was detained seven times from between one day to 21 days by police from Juyuan county and Dujiangyan because of plans to petition to Beijing with other parents.<sup>34</sup>

"It was a very, very small room, so small that there was only enough space for a bed and a small table. I ate and slept there. Apart from that, I could do nothing. After they (those who detained M) locked me inside, they closed all windows and curtains. No wind could get in. The hut was in Zhaogongshan, a mountainous area about 10 to 20km away from my home. When it was time to eat, they sent in the meals. Otherwise, they just locked me up. Apart from me, there were two other parents detained in this hut. We were locked up in different rooms."<sup>35</sup>

M claimed that he suffered back pain because the place of detention was too humid and that caused a disability such that he is now unable to move around freely and cannot take care of himself.<sup>36</sup>

"I now walk with difficulties. I have problems with my lumbar vertebra. It was an illness I got while in detention. Those who detained me gave me medication twice and then discontinued. They told me that giving me medication was only an offer and so they stopped... They did not let me go out even after they saw me walking with difficulties. It was only after I couldn't move that they released me."<sup>37</sup>

Throughout the interview, M repeatedly told Amnesty International that with this disability he received during his detention and the loss of his child, he had no hope left and wanted to end his life.<sup>38</sup>

"A 16-year-old child is flesh of the parents and gone in a blink. Parents have been placed under prolonged detention by the government. I have lost the ability to make a living and now live under great pain. I and other parents sought help from the authorities. They did not help us resolve the problems but insulted us in return. I want to end my life and stay with my child now. He was my only child."<sup>39</sup>

K spoke to his 15-year-old daughter, whom he described as smart and beautiful, at Juyuan Middle School only 20 minutes before the earthquake. When K planned to petition to Beijing with parents of victims from the same county, he was detained.<sup>40</sup>

"They (local police) detained me once for two days. They locked me up in a small room and conducted forced political education. They told me repeatedly that the country was suffering from disasters therefore we must not raise questions about 'tofu dregs' construction. They threatened me to stop pursuing justice, if not, they would get me."<sup>41</sup>

"I dare not work at my shop now and only stay at home because I was the only one working there. They could come and detain me at any time. I'm scared."<sup>42</sup>

L, also a parent of Juyuan Middle School, was detained for seven days after he tried petitioning to the provincial government with dozens of parents.<sup>43</sup>

"The police tricked me into going to the police station the day after I tried petitioning. They told me that they wanted me there for some questions but in fact took me to a park and detained me there for seven days. Those who watched over me were employed by Juyuan township government. They gave me two meals per day and I had nothing to do there except lay on the bed."<sup>44</sup>

There were no legal documents for L's detention. When he asked for the legal basis of his detention, the police officers failed to provide any.<sup>45</sup>

"We did not break any provision of the law. They were silent. They detained me without any legal basis for seven days. I don't know if there is real protection of human rights for Chinese people."<sup>46</sup>

Li planned to go to Chengdu with more than 10 parents of the collapsed Juyuan Middle School in Dujiangyan to petition in September 2008. As soon as they gathered together, 12 of them were taken to the police station for interrogation and were released a few hours after. The police did not take him to the police station but came to him two days later and unlawfully detained him at a resort hotel for seven days. He went on hunger strike to protest against the illegal detention. The individuals guarding Li told him that if he died, they could simply ask a forensic doctor to take a look at his body and then send it for cremation. They continued to say that his death would have no connection with them.<sup>47</sup>

H from Yinghua town lost his two sons, aged 10 and 16, during the earthquake. Before they died, the younger son was rehearsing in a classroom for a performance for Children's Day on 1 June. H was detained twice by the police after he planned to petition to the provincial government in June 2008.<sup>48</sup>

"Shifang city police came to my home at around 11:30pm and transferred me to Deyang city police. They did not present any legal document or warrant when they took me away. Only one police officer showed his identification... I was released at around 8:00am the next morning. While in detention, four police officers threatened me to reveal plans that I and other parents had. They asked me why we wanted to go to the provincial government and warned me that it was a serious problem. They threatened me to tell them everything, if not, they would punish me... I was interrogated until after 4:00am and then was allowed to sleep until 7:00am before release. I was not beaten but they searched me and confiscated my notebook."<sup>49</sup>

H was detained again, under circumstance similar to his first detention – in both instances, the police took him away from home near midnight without presenting a warrant and he was interrogated for several hours and then released in the early morning. Police arrived at H's home on another occasion near midnight when he was not at home. The police instead took his brother whose child also died in the ruins of the school buildings and his 8-year-old

nephew to the local police station and kept them there for the entire night.<sup>50</sup>

“The eight-year-old child did nothing but cry. Those who detained him gave him bread and milk hoping that he would stop crying after being fed.”<sup>51</sup>

Unlawful or arbitrary detention of children is prohibited in international law. China, as a state party to the Convention of the Rights of the Child, has an obligation, under article 37 of the Convention to “ensure that no child shall be deprived of his or her liberty unlawfully or arbitrarily”.<sup>52</sup>

China’s Constitution prohibits unlawful detention. It is also a crime under its Criminal Law. Article 37 of the Constitution provides the legal basis of the protection of personal liberty of Chinese citizens. The provision states that:

“The freedom of person of citizens of the People's Republic of China is inviolable.

No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.

Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.”<sup>53</sup>

Under Chinese law, there are three types of official detention: criminal, administrative and judicial. Criminal detention can only be applied to criminal suspects during the criminal justice process with adherence to requirements set forth under the Criminal Procedure Law, including the presentation of a warrant and family notification of the reason and venue of detention within 24 hours.<sup>54</sup> Administrative detention is the detention of individuals at the hands of the state without trial. The most common forms of administrative detention in China that the authorities have used to target dissident voices are detention under the Public Order Administrative Punishment Law<sup>55</sup> and Re-education Through Labour.<sup>56</sup> The Public Order Administrative Punishment Law gives power to law enforcement bodies to punish many offences, for example, “illegal demonstrations” or the vaguely defined “public disturbances”, with administrative penalties including fines and administrative detention for up to 20 days. The police must produce a written decision for the penalty, with information about the personal information of the detainee, facts and evidence of the offences, and basis and duration of the penalty.<sup>57</sup> Re-education Through Labour is a form of punitive administrative detention originally designed to punish individuals who committed minor offences but is now used by the authorities to target petitioners, political dissidents, Falun Gong practitioners and others who seek to exercise their fundamental rights and freedoms and to deprive them of their liberty without trial for up to four years. Written decisions detailing the facts, legal basis, and detention duration must be delivered to Re-education Through Labour detainees and their families.<sup>58</sup> Judicial detention is a punitive measure that Chinese courts can apply to individuals who obstruct the procedures in civil or administrative lawsuits, including creating disturbances at court hearings, refusal to implement court orders, etc. The maximum period of judicial detention is 15 days and a written verdict must be delivered to the detainee.<sup>59</sup>

None of the parents mentioned above have received any documentation about their detention and many were detained in venues outside official detention facilities. Amnesty International has noted instances where authorities misused administrative detention law to also punish parents who seek justice.

Zhang and Chen's children were classmates at Dongqi Middle School, and died when the school collapsed during the earthquake. Both Zhang and Chen were accused of violating article 23 of Public Order Administrative Punishment Law<sup>60</sup> for "disturbing social order" and placed under administrative detention for three days as punishment in October 2008. Zhang claimed that she and 20 other parents went to the school and requested to meet with the school principal. As they gathered at the front door and waited for between 20 to 30 minutes, a group of police arrived, told them that the mayor was offering to meet with them and asked them to get into the police cars. However, they were taken instead to a police station for interrogation. The police asked Zhang to sign a document admitting that she had "disturbed the social order". She initially refused as she claimed that she had not violated the law. But the police told her that she would be released after she signed it. After she did, she was taken to a detention centre and kept there for three days. Before Zhang was released, she had to sign another document saying that she would not continue petitioning or protest at the school or local government office building.<sup>61</sup>

Chen was slapped by a detention centre personnel and handcuffed after she complained that she had nothing to eat for a whole day while in detention. She was also forced to make written promises not to pursue any further the possible misuse of funds for the maintenance of the middle school which many parents claim contributed to the collapse of the school building and caused the deaths of hundreds of students and teachers.<sup>62</sup>

# OBSTRUCTION OF PETITIONING

All the parents Amnesty International spoke to, except N who spoke positively of the local government, have been stopped from petitioning to the higher authorities. Most of them were placed in “black jails” after petitioning or attempting to petition. They were warned not to continue petitioning as well as not to get in touch with foreign journalists.

H petitioned to governments at the town level and the city, one level above. He also tried petitioning to the provincial government but was intercepted by the local authorities. He told Amnesty International that he first petitioned to Yinghua township government on 20 May, eight days after the earthquake, to request an investigation into the quality of collapsed schools in the town.<sup>63</sup>

“Yinghua township government told me that it (the collapse of school buildings) was caused by the earthquake. I countered by saying that the schools were substandard and requested an examination (of the ruins of the school) by the construction department. An investigation was conducted by the construction department of Deyang city. However, the government has never replied to our petitions and the investigation report has never been made available to us. We approached the township government, Deyang city government and Shifang city government, requesting a reasonable reply, investigation into the quality of school buildings and that perpetrators be brought to justice.”<sup>64</sup>

In late June 2008, H and about 100 parents gathered together to go to the provincial government. The city government deployed more than 100 police officers including the criminal investigation team to block them. The police stopped their buses but these parents continued their journey on foot. After this, the police took H away from his home and detained him at the police station for interrogation without presenting any legal documents. On 1 July 2008, riot police were deployed to disperse grieving parents from the town who went to the local education bureau to petition. H was approached by the village leader, Party secretaries from the village and town, members of the political and legal affairs committee of the city, the criminal division of the city police and the city procuratorate and was warned not to petition to the higher level any more.<sup>65</sup>

“They did all sorts of thing to prevent us from petitioning to them. ‘If you go again, thugs may come to you and deal with you. You are only powerless ordinary people,’ they told me.”<sup>66</sup>

H continued by telling Amnesty International that the parents were not only prevented from petitioning to the authorities, they were also prevented from seeking compensation from a chemical engineering enterprise. He claimed that the earthquake had caused leakage of ammonia and sulphur gas from a chemical plant near his younger son’s school and that the leakage of these chemicals delayed the rescue process.<sup>67</sup>

“The leakage of ammonia and sulphur gas is toxic. That was why our children were buried under the ruins and no one from the school rescued them. I was among the few brave parents who dared to take the risk and get close to the school for rescue.”<sup>68</sup>

Management of the chemical engineering enterprise told H and other parents that the local government would handle any compensation claims for their children. But officials at the local government told them that the government had already resolved this matter with them and said they were too greedy to ask for more compensation.<sup>69</sup>

“The leakage of toxic gas delayed the rescue process so that many children’s lives could not be saved. We wanted to seek justice from the enterprise but the government prevented us from doing so. I don’t understand that. It is a private enterprise but the government protected them because many of them (officials) have shares in it and they wanted dividends.”<sup>70</sup>

G’s 15-year-old daughter died when Beichuan Middle School collapsed. He petitioned with other parents to both the county and provincial governments. These parents initially registered their complaints at the county level but the county government postponed again and again a reply. In the end, the county government told them that it was the earthquake that took away the lives of their children and there was no such thing as “tofu dregs” construction. These parents then decided to take their case to the provincial government because they were not satisfied with the reply from the county government. As they were on the highway on the way to the provincial capital Chengdu, they were intercepted by county government officials who persuaded them not to go there. G told Amnesty International that they were the only ones who dared to petition. Many parents dared not to because they were pressured by their work units. G himself was also threatened by local police to drop further actions or he would risk ending up in a Re-education Through Labour camp.<sup>71</sup>

J’s 17-year-old daughter died as the four-storey Dongqi Middle School collapsed. He and many other parents requested compensation but the insurance company refused to pay. The parents turned to the school as well as the city government. When they approached the city government, the mayor of the city denied responsibility for paying any sort of compensation. The government also deployed hundreds of paramilitary personnel to break up the crowd and detained some parents including J’s wife.<sup>72</sup>

“We petitioned to Deyang city government. They sent several hundred paramilitary personnel and cracked down on us by force. A number of us were detained. One of them was my wife. They (local police) asked us to go to the township government office and bring them home.”<sup>73</sup>



# DENIAL OF LEGAL REPRESENTATION

Notwithstanding various legal provisions that confer the right of remedy, survivors and parents of the many students killed and injured during the Sichuan earthquake have been stymied in their efforts to receive accountability and justice for victims of negligence in the construction industry —particularly where it involves the construction of schools and public buildings.

Amnesty International was told by parents that lawyers from Sichuan province dare not take up cases of alleged substandard construction that led to the collapse of many school buildings and were warned by the authorities to stay out of these cases. Furthermore, lawyers from outside Sichuan province who were bold enough to take up these cases were also hindered in their work. Amnesty International was told that victims were pressured by the authorities not to seek legal advice from Beijing and some were reportedly abducted when they tried going to Beijing to meet these lawyers. This has denied the rights of grieving parents to seek any legal representation.

H told Amnesty International that many victims from their county were warned to stop seeking legal assistance from Beijing and told them not to travel there. The local government threatened these parents with denial of the compensation they are entitled to for the loss of their children.<sup>74</sup>

“The government exerted immense pressure on us as we planned to sue to the court. They (the government) told us that they had already resolved our problems and gave us 60,000 yuan (US\$8,775) per dead child as compensation. They told us that if we continue to petition to the provincial government, we may not be able to withdraw the 60,000 yuan that they deposited in our bank accounts. They used this to threaten us. At that time we were in contact with Legal scholar E. I requested E to seek justice for us. At the end the government exerted much pressure on us and told us not to contact E.”<sup>75</sup>

H has also contacted several lawyers from Sichuan province, but all of them refused to take up these cases. One of them told him that he would not have a way to make a living in the future if he took up cases related to the earthquake.<sup>76</sup>

Several Beijing lawyers told Amnesty International that some parents from Fuxin No.2 Primary School contacted them in late June 2008 for legal advice and to possibly seek legal representation. According to the lawyers two of these parents planned to go to Beijing to meet with lawyers but were intercepted by local police and sent back to their hometown.<sup>77</sup>

“The two parents had made an appointment with me and planned to fly over from Sichuan to meet me in Beijing the next day. But the day after the originally scheduled meeting, they should have arrived but they still had not. One of the parents contacted

me over the phone and told me that they were prevented from flying to Beijing by the local police at (Chengdu) Shuangliu Airport.”<sup>78</sup>

Amnesty International tried contacting the two parents but the mobile number of one of them is no longer in use. Several lawyers from Beijing interested in pursuing accountability for the victims of the earthquake told Amnesty International that during the summer of 2008 when they had contacts with parents from Sichuan, these parents had to have their mobile numbers changed from time to time in order to get away from wiretapping by the authorities.<sup>79</sup>

However, it is important to note that the other parent, N, denied that he had been blocked from travelling and said that he could go to Beijing whenever he wanted. He repeatedly told Amnesty International that the government had taken good care of the earthquake victims, provided them with free medical treatment and new homes, and that they would get the 2,000 yuan (US\$292) old-age insurance per month after they retired as a compensation for their lost children. He asked Amnesty International to cover the positive side on the work of the local government in this report.<sup>80</sup>

The lawyers in Beijing who had been approached by some survivors told Amnesty International that soon after these parents contacted them, the Beijing Municipal Bureau of Justice warned the law firms in which these lawyers are employed not to participate in these cases and ordered guarantees from the law firms that they would not take part in these cases.<sup>81</sup>

“Beijing Municipal Bureau of Justice requested the partners of our law firm to promise to them, in the form of a resolution, that the law firm as well as all lawyers of the firm would not participate in cases or provide legal assistance to victims of the Sichuan earthquake. And then the head of our law firm made a special effort to tell me about this in private and stressed to me that this incident happened.”<sup>82</sup>

“Because of the Olympics, the authorities wanted to maintain stability and therefore we were not allowed to intervene into any cases from the Sichuan earthquake region.”<sup>83</sup>

Under Chinese law, it is unlawful for lawyers to take up cases on their own without authorization from the law firm. Article 25 of the Law on Lawyers requires lawyers to undertake all their business through their law firm and that their law firm is the body to “centrally accept authorization, sign written authorization contracts with the clients and, in accordance with State regulations, collect fees from the parties and truthfully enter them in its accounts”.<sup>84</sup> The Law on Lawyers further states that lawyers are not allowed to “accept authorization privately, charge fees to the client privately, or accept money or things of value from the client”.<sup>85</sup> Lawyers violating these provisions will receive warnings from the judicial departments and could be punished by a maximum fine of 10,000 yuan (US\$1,462). Any illegal gains will be confiscated. For serious circumstances, lawyers will be punished by suspension of business for three to six months.<sup>86</sup>

By exerting pressure on law firms and prohibiting them from getting involved in cases related to the Sichuan earthquake, the authorities has successfully prevented earthquake victims from seeking legal representation from those lawyers who have the courage to take up cases

that are considered politically sensitive or which involve human rights violations.

When asked what would happen if the lawyers took up cases from the earthquake region, Lawyer C told Amnesty International that the judicial departments would consider the action as a deliberate challenge to their authority and a violation of their rules and he believed that the authorities would take actions to target these lawyers sooner or later.<sup>87</sup>

Lawyer C's worry is not unfounded. Control and arbitrary restrictions from the judicial institutions over the legal profession is not new in China. A recent well-known example occurred in April 2008 after a group of lawyers from across the country signed an open letter offering legal assistance to Tibetans detained in connection with the unrest in March 2008 in Tibet Autonomous Region and Tibetan-populated areas in neighbouring provinces. Authorities warned the lawyers not to get involved in such cases and many of the signatories were questioned by the authorities and subjected to police surveillance. The authorities threatened them with holding up the process of the renewal of their individual practicing licenses and the licenses of the law firms where they were employed.<sup>88</sup> Without renewal of their professional licenses, the lawyers will not be able to participate in cases as lawyers.<sup>89</sup> Similarly for law firms, without passing the annual review, the law firm cannot continue its operation.<sup>90</sup> One of the signatories of this open letter, Teng Biao, failed to have his lawyers' license renewed in May 2008 because, as he was told by the judicial department, that his employer, China University of Political Science and Law, had not supported the renewal of his professional license.<sup>91</sup> Without the approval from the employer, legal scholars at academic or research institutes cannot work as part-time lawyers.<sup>92</sup>

## COURTS' REFUSAL TO ACCEPT LITIGATIONS

In addition to preventing parents from Sichuan from getting legal advice and assistance, the Chinese authorities have also restricted the earthquake victim's ability to get their day in court. Not a single suit relating to compensation for the earthquake has been successfully filed or accepted by a Chinese court as of 21 April 2009.

On 1 December 2008, more than 50 parents whose children died in Fuxin No.2 Primary School filed a lawsuit with the Deyang City Intermediate People's Court against the school principal, education bureau of nearby Mianzhu city, Fuxin township government and a construction contractor. The suit asked for compensation of approximately 130,000 yuan (US\$19,000) per child, a public apology and to hold the defendants responsible for any criminal acts. They hired Xu Peiguo, a lawyer from Shanghai, to take the case to court. Xu Peiguo told news agency Associated Press that 126 children were killed when the school collapsed during the earthquake. After these parents filed the lawsuit, some of them complained that they had been pressed by the authorities to drop the suit. In the end, the court did not accept the case.<sup>93</sup>

From June to August 2008, the provincial court in Sichuan province issued three directives to lower courts in the province on adjudication of cases relating to the earthquake. On 2 June 2008, the Sichuan Province Higher People's Court issued a directive, the "Sichuan Province Higher People's Court's Notice Regarding Reinforcement of Post-Earthquake Trial Work", (Appendix I) which requested lower courts to carefully guard and control the types of civil lawsuits that could enter the formal judicial process. The directive stated that lower courts must "avoid relying purely on law to handle disputes and thereby cause a chain reaction and which instils passivity across the overall work".<sup>94</sup> The Notice further instructs lower courts to report all "major", "sensitive" and "controversial" cases to the provincial court for its coordination and consistency of standards for law enforcement.<sup>95</sup> For sensitive or mass cases,<sup>96</sup> courts must not accept them without having the parties first go through mediation.<sup>97</sup> Throughout the document, the leadership of the Communist Party of China is stressed and courts must voluntarily subject themselves to the leadership of party cadres and report to them the adjudication and implementation of verdict of cases related to the earthquake.<sup>98</sup>

On 13 June 2008, eleven days after publication of the above directive, the Sichuan Province Higher People's Court issued another directive detailing how lower courts in the province, before accepting any cases related to the earthquake, should report these cases to the court of one level above up to the provincial court so that it will be able to coordinate and provide guidance for handling disputes.<sup>99</sup> (Appendix II) As of 31 July 2008, intermediate people's courts from cities including Guangyuan, Mianyang, Deyang, Chengdu, Aba, Ya'an, Ziyang, Yibin, Suining and Ganzi reported 130 cases to the provincial court. Most of them were about

disputes over tenancy contracts, contracts of sale of property, and indemnities for personal injuries or loss of property stemming from the earthquake.<sup>100</sup>

On 5 August 2008, the Sichuan Higher People's Court issued a directive listing the types of civil lawsuits that lower courts may or may not accept. (Appendix III) Among the list, the types of case that courts may accept are generally not sensitive ones including requests for dissolution of tenancy contract as the building no longer exists, disputes over inheritance that can be settled in accordance to the Law of Succession, and disputes over loans that will not cause negative reaction from the public.<sup>101</sup> Suits related to disputes over property sales due to quality of the construction, compensation for personal injuries or damages to property caused by the collapse of buildings, and disputes over compensation by insurance companies, will not be accepted by any court in Sichuan province until after relevant authorities have given further instructions.<sup>102</sup>

When asked about their opinion as to why no courts have so far taken up lawsuits related to the earthquake, lawyers and legal scholars told Amnesty International that it was due to the lack of rule of law and political interference in the judicial process.<sup>103</sup>

“Chinese courts are not independent. Once they face pressure from the government, they will back down. If the government does not allow them to accept lawsuits, courts will follow their instructions.”<sup>104</sup>

“The lawsuits related to the earthquake reflect a typical problem in China. It reflects the larger picture of problems with China's legal system including the lack of independence with the courts and that the authorities see themselves as above the law. Law in practice is always interfered with by groups and individuals, so that courts cannot develop its judicial process in accordance with the law.”<sup>105</sup>

“The problem is that the control over lawyers and the earthquake victims is giving up the rule of law to the so-called stability. The authorities have failed to see the stabilizing forces that can be achieved if these victims are able to seek justice through litigations.”<sup>106</sup>

# SURVEILLANCE

All those interviewed for this report told Amnesty International they experienced some type of surveillance by government authorities. In most cases, it was telephone tapping and in some cases, parents believed they were monitored by plainclothes police.

All those parents interviewed by Amnesty International about their problems with seeking accountability after the earthquake, except N, claimed that their telephones were being tapped. They came to this conclusion because the police knew their plans and next steps soon after they had discussed them over the telephone.<sup>107</sup>

H said that as soon as he spoke to foreign journalists over the telephone, the police would contact him and warn him not to speak to foreign journalists again.<sup>108</sup>

“The criminal investigation team tapped my phone. They threatened me with punishment if I continued to pursue. Sometimes, the government told me that same. Some journalists wanted to interview me but local police kicked them away. They were from inside and outside China. Some were from Beijing. They (local police) kept (journalists) from interviewing me.”<sup>109</sup>

Similar things happened to K and M:

“Last June, we were preparing to petition to Beijing. I don’t know how they (local police) were so informed. They knew our plans soon after we made decisions. It must be phone tapping. They knew every single phone call I made.”<sup>110</sup>

“Our phones were all tapped. I now use two mobile phones. Similarly, my emails were all monitored.”<sup>111</sup>

Beijing lawyers approached by the Sichuan families agreed with this conclusion and claimed that their telephones were tapped as well. According to these lawyers, soon after they discussed legal assistance with some parents over the telephone, the judicial department approached the law firms where they worked and warned them not to be involved in cases related to the earthquake.<sup>112</sup> Lawyer A told Amnesty International that the unusual way the judicial department interfered into this matter proved that the authorities obtained the information through wiretapping.

“This time, the Beijing Municipal Justice Bureau did not summon us to their office because we had not established the formal lawyer-client relationship and we had not officially taken up these cases, therefore the authorities should not have known about this. If they really summoned us to their office, then we would have asked them how they knew about our plans. They could not tell us that they obtained the information

from internal security police (*guobao*) through wiretapping. That was why the judicial department instead gave phone calls to the law firms and requested them not to accept cases from the earthquake regions."<sup>113</sup>

Apart from wiretapping, some parents told Amnesty International that they were followed by plainclothes police.<sup>114</sup>

F said she had plans to file a lawsuit to sue the construction contractor for shoddy construction but was unable to do so, or to go to Hong Kong to publicize the case because she believed local police were following her everyday.<sup>115</sup>

"They (local police) sent someone to follow me everyday. Recently there is only one (unidentified individual) who followed me, 'accompanied' me at my shop and prohibited me from contacting other parents... I want to sue to the court. I want to file a suit to Dujiangyan People's Court against the construction contractor for 'tofu dregs' construction. The school building collapsed in 20 some seconds. But they (local police) followed me everyday so I could not go."<sup>116</sup>

M and K also complained about being followed and a feeling of helplessness:

"I was also followed (by plainclothes police). Now they don't follow me anymore. Usually when the plainclothes police knew what we were planning to do, they would detain us." They were so rude to us. We have no capacity to resist and can only be manipulated by them. We are in their hands and don't have a way out."<sup>117</sup>

"They followed us even to the toilet and confiscated all our personal belongings including our mobile phones. They confiscated all the phone numbers of our contacts and our materials. They did not say anything nor give us any documentation for detaining us. They could detain us without any legal procedure."<sup>118</sup>

# PERSECUTION OF ACTIVISTS

Human rights defenders and activists who offered assistance to the victims, disseminated information related to the earthquake, and represented other parents in negotiating with the authorities and insurance companies, were harassed and arbitrarily detained. Several provisions of China's Criminal Law have been used as a tool to crackdown on activists.

## HUANG QI

In June 2008, police detained Sichuan-based human rights activist Huang Qi on suspicion of "unlawfully holding documents classified as highly secret". The reason for his detention was unclear, but appeared to be connected to his work assisting the families of five primary school pupils who died when their school buildings collapsed in the earthquake. The families were seeking compensation from local officials because they believed corruption led to poor construction standards. Huang Qi was held incommunicado for over 100 days before his first meeting with a lawyer in September 2008. In October, he refused the authorities' offer to release him on condition he gave up human rights work. On 2 February, the court failed to make a public announcement of his trial three days before the trial as instructed in the Criminal Procedure Law but gave only one-day notice to his family and lawyers. After objections by his lawyers, later the same day, the court decided to postpone his trial. Huang Qi remains in detention without trial or access to his family.<sup>119</sup>

## LIU SHAOKUN

In July 2008, Sichuan police sent Liu Shaokun, a teacher at Guanghan Middle School in Deyang city, to one year of Re-education Through Labour for "inciting a disturbance". He was detained on 25 June 2008 and his family was informed of the administrative detention after almost a month on 23 July 2008. Liu Shaokun's family believe the administrative detention is connected to his posting on the web photos of collapsed buildings and his public criticism against the local government concerning the poor construction of school buildings that collapsed during the earthquake. According to human rights group Human Rights in China, Liu Shaokun was allowed to serve his term outside the detention facility and returned home on 24 September 2009.<sup>120</sup>

## TAN ZUOREN

On 28 March 2009, Chengdu police detained environmentalist and writer Tan Zuoren on suspicion of "inciting subversion of state power". Local sources told Amnesty International that local police requested Tan Zuoren to go to the police station for a talk on the morning of 28 March. At approximately 3pm, a group of police officers searched his home, took away some of his writings, other documents and video CDs. In the evening, the family received a notice issued by the Chengdu City Police Station, which stated that Tan Zuoren had been detained for criminal investigation. Local sources believed that his detention is linked to his intention to issue public materials on the first anniversary of the Sichuan earthquake. These materials include a list of children who died during the earthquake on 12 May 2008, along



with an independent report on the collapse of many school buildings due to faulty construction. He is now held at Wenjiang Detention Centre.<sup>121</sup>

## HE HONGCHUN

On 27 September 2009, Beichuan police detained parents' representative He Hongchun on suspicion of "gathering a crowd to disturb social order" after he organized a protest outside an insurance company. He Hongchun's 3-year-old niece died in the earthquake and he was chosen as a representative of parents beginning in August 2008. In September 2009, he was selected as one of the nine representatives to represent more than 500 parents from Beichuan to discuss matters over insurance and compensation with the authorities and the insurance company. His trial date was originally set as 3 April 2009 but the Beichuan County People's Court postponed it to 14 April and then to an unknown date due to the serious illness of the prosecutor's father. His family believes that He Hongchun was targeted because of his role in representing parents during negotiation with the authorities and the insurance company.<sup>122</sup>

# INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK

## RIGHT TO AN EFFECTIVE REMEDY IN INTERNATIONAL HUMAN RIGHT LAW

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”

Universal Declaration of Human Rights, Article 8

While the right to an effective remedy is a procedural right, it is critical to the process of realizing substantive rights and therefore important to ensure justice. It is further articulated in various international human rights treaties including International Covenant on Civil and Political Rights,<sup>123</sup> Convention on the Rights of the Child,<sup>124</sup> Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment<sup>125</sup> and International Convention on the Elimination of All Forms of Racial Discrimination.<sup>126</sup> Apart from the International Covenant on Civil and Political Rights that China has only signed but not ratified, China is a state party to all of the above-mentioned treaties.<sup>127</sup> China therefore has an obligation, in the specific context of the treaties it has ratified, to ensure remedy to victims of violations of the rights that they protect.<sup>128</sup> This obligation includes the duty of states to ensure access to justice for people within their territory or under their jurisdiction to complain and have their cases promptly and impartially examined by independent bodies, including courts, and where violations are found to have occurred, ensure reparations to victims. More generally, states' obligation to investigate complaints of human rights violations, hold those responsible to account and ensure reparation to victims have been recognized widely, including through UN General Assembly resolutions.<sup>129</sup>

If it is determined that human rights violations have occurred, then victims and their families are entitled to full and effective reparations, as an essential form of the right to remedy in international human right law. Reparation in accordance with international standards includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition:

- **Restitution**, for instance release (of detainees and prisoners), restoration of legal rights and return of property;
- **Compensation**, including for physical or mental harm, lost opportunities, harm to reputation or dignity and legal and medical costs;

- **Rehabilitation**, including medical and psychological care, legal and social services, and social reintegration;
- **Satisfaction**, including cessation of continued violations, disclosure of the truth (without causing further harm), search for victims who have not come forward, and an apology for the wrong done;
- **Guarantees of non-repetition**, including steps to ensure that all proceedings abide by international standards of due process, fairness and impartiality, and strengthening the independence of the judiciary

## RIGHT TO REMEDIES UNDER CHINESE LAWS AND REGULATIONS

Under Chinese law, the parents of children who died or were injured in their schools when the earthquake struck Sichuan province have the right to initiate civil litigations to seek compensation and/or apology from the school building designers, construction contractors, or anyone who should bear the responsibility for compensation. They could also request the authorities to conduct criminal investigations and punish government officials or any other persons found guilty of criminal acts. They also have the right to petition and seek justice from the authorities.

### CIVIL LAWSUITS

Chapter 5 of General Principles of the Civil Law lists out the civil rights of Chinese citizens protected under this basic law. Article 98 provides that: "Chinese citizens have the right to life and health."<sup>130</sup>

Under this law, individuals whose claim that their rights have been violated can seek remedies, including compensation or apology, for the loss of lives and injury from anyone legally responsible. On 28 December 2003, the Supreme People's Court promulgated a judicial interpretation regarding action for damages for personal injuries.<sup>131</sup> Under its article 1, Chinese courts must accept cases in which the litigants seek compensation for damages in life, health and body from people who have the obligation to compensate. If the victims are dead, their close relatives<sup>132</sup> can become the litigants.<sup>133</sup>

In terms of procedure, as long as the following conditions are met, a civil lawsuit can be lodged: 1/ such case is filed by a plaintiff who has a direct interest in the case; 2/ the defendant is specific; 3/ the claims are clear and concrete; 4/ the civil lawsuits are lodged within the jurisdiction of the court.<sup>134</sup>

### CRIMINAL RESPONSIBILITIES

Apart from initiating civil lawsuits, under China's Criminal Procedure Law, individuals whose personal or property rights are violated have the right to report to the police, a procuratorate or a court about the facts of the crime or bring a complaint to them against a criminal suspect.<sup>135</sup> When the victims think that a case should be filed for investigation by the police but the latter have not done so, they have the right to bring the case to a procuratorate, which will instruct the police to explain why the case was not filed for investigation. If the procuratorate determines that the reasons given by the police for their inaction was unreasonable, the procuratorate will notify the police to file the case for criminal investigation, which in fact is an order which the police must follow.<sup>136</sup> In cases where the

victims have evidence to prove that the defendants should be investigated for criminal responsibility because their acts have infringed upon the victims' personal or property rights but the procuratorate did not order a police investigation, the victims have the right to bring a criminal suit directly to a court. For cases that can be brought directly to the court, if the victims are dead or have lost their ability to conduct such an action, their legal representatives and close relatives shall have the right to lodge a lawsuit to a court and the court must accept it according to the law.<sup>137</sup>

For the parents whose children died or were injured when the school buildings collapsed during the earthquake, they have the right to ask the authorities to investigate into possible criminal acts of individuals in accordance with several relevant provisions in China's criminal law. For example, articles 382 and 384 provide for the offence of embezzlement and misappropriation of public funds by state agents or individuals authorized by officials.<sup>138</sup> Under these provisions, these parents have the right to ask the authorities to look in possible corruption or embezzlement of the construction or maintenance funds for the collapsed schools. Article 137 criminalizes disregard for construction standards or regulations that result in serious accidents.<sup>139</sup> Therefore, these parents have the right to ask for the authorities to investigate poorly designed or constructed buildings which may have caused serious injuries or death. Article 138 provides that individuals can be held liable if they are directly responsible and "knowingly fail to adopt measures against dangers in school buildings or in educational or teaching facilities or to make a timely report about the matter, so that an accident involving heavy casualties occurs".<sup>140</sup> Accordingly, these parents have the right to ask the authorities to investigate possible failures where individuals are directly responsible for failing to adopt measures against dangers in school buildings or in educational or teaching facilities. Article 397 outlaws the abuse of power, neglect of duty or malpractice for personal gain by officials, thus "causing heavy losses to public money or property or the interests of the State and the people".<sup>141</sup> Therefore, these parents have the right to ask the authorities to investigate any negligence of duties or abuse of power by government officials which caused the collapse of any school buildings.

#### PETITIONING

China's petitioning (*shangfang*) system is a historical and cultural tradition dating back to ancient Chinese empires in which commoners submitted their complaints directly to the emperor. Now, the legal right of Chinese citizens to criticize the government comes under China's Constitution. Its article 41 provides:

"Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary; but fabrication or distortion of facts with the intention of libel or frame-up is prohibited.

In case of complaints, charges or exposures made by citizens, the state organ concerned must deal with them in a responsible manner after ascertaining the facts. No one may suppress such complaints, charges and exposures, or retaliate against the citizens making them..."<sup>142</sup>

The right to petition is codified in the Regulation on Letters and Visits revised by the State

Council in 2005.<sup>143</sup> However, the implementation varies across the country as provinces and cities have their own regulations on implementing the national regulation, but in theory not contravening the principles outlined in the national regulation.<sup>144</sup> Local governments and their divisions have the duty to effectively handle complaints and suggestions filed by Chinese citizens, ensure that channels for filing complaints and suggestions are accessible to the people and for not retaliating against individuals who lodge complaints.<sup>145</sup>

However, the regulations require complainants to file their complaints to the level responsible for handling the matters or one level higher up. Their complaints will be disregarded if the complainants lodge the same complaints to a higher authority before the end of the time limit for handling the complaints at the lower level.<sup>146</sup>

## RECOMMENDATIONS

### **Amnesty International calls upon the Chinese authorities to take immediate action to address the grievances of survivors and relatives of those who were killed or injured during the earthquake in Sichuan province:**

- Facilitate access for survivors and relatives of those who were killed or injured that wish to file criminal or civil complaints to competent, independent and impartial tribunals applying international fair trial standards with all procedural safeguards required and, if individuals are convicted, without recourse to the death penalty;
- Immediately stop the harassment, intimidation and arbitrary or unlawful detention of these parents and activists;
- Allow parents and activists to freely express their concerns in the media, including on the internet, without fear of penalty or retaliation;
- Allow lawyers to represent survivors and parents in any civil or criminal proceedings that are provided for in Chinese law;
- Immediately and unconditionally release Huang Qi, Tan Zuoren and He Hongchun as they were detained solely for engaging in peaceful protests or exercising their right to freedom of expression as guaranteed in China's Constitution and in international law;
- Ratify the International Covenant on Civil and Political Rights and fully incorporate its provisions as well as those of the International Covenant on Economic, Social and Cultural Rights into domestic law to guarantee human rights, including the right to an effective remedy.

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<sup>1</sup> Amnesty International's interview with G on 20 March 2009.

<sup>2</sup> China Earthquake Administration upgraded the earthquake to 8.0 on 18 May 2008, after initial assessments of 7.6 and then 7.8. "Magnitude of Wenchuan earthquake revised as 8.0" [汶川地震震级最终修订为 8.0 级巨大地震], *Yangcheng Evening News* [羊城晚报], 19 May 2008, <http://www.ycwb.com/ePaper/ycwb/page/1/2008-05-19/A03/52871211173864622.pdf>, accessed 25 March 2009. The U.S. Geological Survey has measured the quake at 7.9. See: <http://earthquake.usgs.gov/eqcenter/eqinthenews/2008/us2008ryan>, accessed 25 March 2009.

<sup>3</sup> "Magnitude 7.8 earthquake hits Sichuan's Wenchuan" [四川汶川发生 7.8 级地震 部分地区震感明显], Xinhuanet, 12 May 2008, [http://news.xinhuanet.com/newscenter/2008-05/12/content\\_8151662.htm](http://news.xinhuanet.com/newscenter/2008-05/12/content_8151662.htm), accessed 1 April 2009.

<sup>4</sup> China Earthquake Networks Centre [中国地震台网中心], "Statistics on aftershocks of magnitude 8.0 earthquake in Wenchuan county, Sichuan province, as of 22 March 2009" [截至 2009 年 3 月 22 日四川汶川 8.0 级地震余震情况统计], China Earthquake Networks Centre via China Earthquake Administration,

23 March 2009,

[http://www.cea.gov.cn/manage/html/8a8587881632fa5c0116674a018300cf/content/09\\_03/24/1237862598642.html](http://www.cea.gov.cn/manage/html/8a8587881632fa5c0116674a018300cf/content/09_03/24/1237862598642.html), accessed 25 March 2009.

<sup>5</sup> China Earthquake Networks Centre [中国地震台网中心], “Statistics on aftershocks with magnitude over 4.0 of the magnitude 8.0 earthquake in Wenchuan county, Sichuan province, as of 22 March 2009” [截至 2009 年 3 月 22 日四川汶川 8.0 级地震 4.0 级以上余震速报目录], China Earthquake Networks Centre via China Earthquake Administration, 23 March 2009, [http://www.cea.gov.cn/manage/html/8a8587881632fa5c0116674a018300cf/content/09\\_03/24/1237866583968.html](http://www.cea.gov.cn/manage/html/8a8587881632fa5c0116674a018300cf/content/09_03/24/1237866583968.html), accessed 25 March 2009.

<sup>6</sup> According to the Regulation on the Prevention of Geological Disaster, “geological disasters” refer to landslides, subsidence of land and cracking of land surface, caused by natural disasters or human activities, which endanger lives and property. State Council [国务院], Prevention of Geological Disaster [地质灾害防治条例], Order No. 394 [国务院令 394 号], promulgated on 24 November 2003, effective on 1 March 2004, available at: [http://www.gov.cn/jygl/2005-09/27/content\\_70706.htm](http://www.gov.cn/jygl/2005-09/27/content_70706.htm), accessed 13 April 2009.

<sup>7</sup> These figures were revealed by Shi Peijun [史培军], vice chairman of the National Wenchuan Earthquake Expert Committee – a committee set up by the Earthquake Relief Headquarters of the State Council on 21 May 2008, at a press conference organized by the Information Office of the State Council on 4 September 2008. See Information Office of the State Council [国务院新闻办公室], “Information Office of the State Council’s press conference on Wenchuan earthquake and damage evaluation” [国新办就四川汶川地震及灾损评估情况举行发布会], China.org.cn [中国网], [http://www.china.com.cn/zhibo/2008-09/04/content\\_16375310.htm?show=t](http://www.china.com.cn/zhibo/2008-09/04/content_16375310.htm?show=t), accessed 16 March 2009 (Information Office of the State Council, “Information Office of the State Council’s press conference on Wenchuan earthquake and damage evaluation”).

<sup>8</sup> These figures were revealed by Shi Peijun [史培军] at a press conference organized by the Information Office of the State Council on 4 September 2008. See Information Office of the State Council, “Information Office of the State Council’s press conference on Wenchuan earthquake and damage evaluation”.

<sup>9</sup> These figures were revealed by Shi Peijun [史培军] at a press conference organized by the Information Office of the State Council on 4 September 2008. See (Information Office of the State Council, “Information Office of the State Council’s press conference on Wenchuan earthquake and damage evaluation”).

<sup>10</sup> “Progress of Wenchuan earthquake relief (25 September)” [四川汶川地震救灾进展情况(9月25日)], Xinhuanet, 25 September 2008, [http://news.xinhuanet.com/newscenter/2008-09/25/content\\_10110384.htm](http://news.xinhuanet.com/newscenter/2008-09/25/content_10110384.htm), accessed 16 March 2009.

<sup>11</sup> “19,065 victims identified in Wenchuan earthquake; Student death toll still being checked” [汶川地震已公布 19065 名死亡名单 遇难学生人数仍在核查中], Xinhuanet, 21 November 2008, [http://news.xinhuanet.com/newscenter/2008-11/21/content\\_10391962\\_1.htm](http://news.xinhuanet.com/newscenter/2008-11/21/content_10391962_1.htm), accessed 13 April 2009.

<sup>12</sup> Information Office of the State Council [国务院新闻办公室], National Human Rights Action Plan (2009-2010) [国家人权行动计划(2009—2010)年], 13 April 2009, available at: [http://news.xinhuanet.com/english/2009-04/13/content\\_11177126.htm](http://news.xinhuanet.com/english/2009-04/13/content_11177126.htm) (in English) and [http://www.gov.cn/jrzq/2009-04/13/content\\_1283983.htm](http://www.gov.cn/jrzq/2009-04/13/content_1283983.htm) (in Chinese), both accessed 13 April 2009.

- <sup>13</sup> “No official toll of students died in quake yet, Wei Hong” [魏宏：暂时无法给出遇难学生准确人数], People’s Daily via Xinhuanet, 8 March 2009, [http://www.sc.xinhuanet.com/content/2009-03/08/content\\_15890383.htm](http://www.sc.xinhuanet.com/content/2009-03/08/content_15890383.htm), accessed 1 April 2009.
- <sup>14</sup> Ai Weiwei’s blog [艾未未], “Updated list (18 April 2009)” [名单数据更新 09.04.18], [http://blog.sina.com.cn/s/blog\\_473f90ad0100d1mc.html](http://blog.sina.com.cn/s/blog_473f90ad0100d1mc.html), accessed 20 April 2009.
- <sup>15</sup> Foreign Correspondents Club of China, “Reporting interference incidents,” Foreign Correspondents Club of China, <http://www.fccchina.org/harras.htm>, accessed 17 April 2009.
- <sup>16</sup> This is an expression used in China to describe shoddy construction and buildings that are weak and cannot withstand external force.
- <sup>17</sup> The figure is a calculation from information given by Sichuan province’s executive vice-governor Wei Hong [魏宏] at a press conference organized by the Information Office of the State Council on 21 November 2008. At the press conference, he said that “1363 schools have been reconstructed or are currently under reconstruction, taking up 40.8% of the total number to be reconstructed”. See Information Office of the State Council, “Speech by Wei Hong, member of Standing Committee of Sichuan Provincial Committee of the CPC and Executive Vice-governor,” China.org.cn, [http://www.china.org.cn/government/scio-press-conferences/2008-11/21/content\\_16806022.htm](http://www.china.org.cn/government/scio-press-conferences/2008-11/21/content_16806022.htm), accessed 16 March 2009.
- <sup>18</sup> “China says May 12 quake damages 14,000 schools in Sichuan,” Xinhuanet, 25 December 2008, [http://news.xinhuanet.com/english/2008-12/25/content\\_10559716.htm](http://news.xinhuanet.com/english/2008-12/25/content_10559716.htm), accessed 29 March 2009 (“China says May 12 quake damages 14,000 schools in Sichuan”).
- <sup>19</sup> Shi Jiangtao, “Still no official toll of students killed in quake,” *South China Morning Post*, 9 March 2009 (Shi Jiangtao, “Still no official toll of students killed in quake”).
- <sup>20</sup> “‘Tofu dregs’ construction complainant forced to leave his home” [豆腐渣工程投诉者被迫迁], Cable News [有线新闻], 21 April 2009, [http://cablenews.i-cable.com/webapps/news\\_video/index.php?news\\_id=300972&category=0](http://cablenews.i-cable.com/webapps/news_video/index.php?news_id=300972&category=0) (in Cantonese), accessed 21 April 2009.
- <sup>21</sup> Wu Jiao, “School building quality to be probed,” *China Daily*, 17 May 2008.
- <sup>22</sup> “Education ministry to investigate fallen school buildings,” Xinhua via *China Daily*, 26 May 2008.
- <sup>23</sup> At a press conference organized by the Information Office of the State Council on 4 September 2008, when asked about quality of collapsed schools, Ma Zhongjun [马宗晋] said that more than 1,000 schools suffered from at least two problems: they were built on the fault line, for example the structure may not be reasonable and the materials used in the buildings may not be strong. He continued to say that schools had been built relatively fast recently, so some construction problems might exist. See Information Office of the State Council, “Information Office of the State Council’s press conference on Wenchuan earthquake and damage evaluation”.
- <sup>24</sup> See “Central government raises allowance for maintenance of schools in central and western districts” [中央财政提高中西部校舍维修改造资金测算标准], China News Service [中国新闻网], 25 December 2008, <http://www.chinanews.com.cn/edu/kong/news/2008/12-25/1503352.shtml>, accessed 29 March 2009; and “China says May 12 quake damages 14,000 schools in Sichuan”.
- <sup>25</sup> See “Sichuan official denies school buildings soft as tofu dregs” [川官否认校舍豆腐渣], *Ming Pao* [明



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报], 9 March 2009; Zhang Yingguang [张映光] and Li Wei'ao [李微敖], "Wenchuan earthquake investigation report on public buildings still kept in dark" [汶川地震公共建筑调查报告仍未公布], *Caijing* [财经网], 8 March 2009, <http://www.caijing.com.cn/ajax/print.html>, accessed 10 March 2009; Shi Jiangtao, "Still no official toll of students killed in quake".

<sup>26</sup> Cao Guoxing [曹国星], "Beichuan, Sichuan Petitioning Bureau Denies Issues in Quality of School Construction" [北川信访局否认学校建筑存在质量问题], *Radio France Internationale*, 15 April 2009, [http://www.rfi.fr/actucn/articles/112/article\\_13191.asp](http://www.rfi.fr/actucn/articles/112/article_13191.asp), accessed 16 April 2009.

<sup>27</sup> Ben Blanchard, "Police detain parents after China quake city protest," *Reuters*, 21 June 2008, [http://www.reuters.com/article/reutersComService\\_2\\_MOLT/idUSPEK20046220080621](http://www.reuters.com/article/reutersComService_2_MOLT/idUSPEK20046220080621), accessed 10 March 2009; Edward Wong, "Police in China halt parents seeking investigation into school collapse," *The New York Times*, 9 January 2009; Hai Nan, "Parents detained during high-level visit," *Radio Free Asia*, 30 December 2008, <http://www.rfa.org/english/news/china/quake-arrest-12302008163037.html>, accessed 26 February 2009.

<sup>28</sup> Amnesty International's interview with F, H, J, K, L and M on 16, 21, 23 and 29 March 2009.

<sup>29</sup> For more information of "black jails", see Xu Zhiyong's blog [许志永], <http://blog.sina.com.cn/xuzhiyong>, accessed 13 April 2009; Raymond Li, "Petitioners being held in 'black' jails, activists say," *South China Morning Post*, 16 October 2008.

<sup>30</sup> Amnesty International's interview with F on 16 March 2009.

<sup>31</sup> Amnesty International's interview with F on 16 March 2009.

<sup>32</sup> Amnesty International's interview with F on 16 March 2009.

<sup>33</sup> Amnesty International's interview with F on 16 March 2009.

<sup>34</sup> Amnesty International's interview with M on 29 March 2009.

<sup>35</sup> Amnesty International's interview with M on 29 March 2009.

<sup>36</sup> Amnesty International's interview with M on 29 March 2009.

<sup>37</sup> Amnesty International's interview with M on 29 March 2009.

<sup>38</sup> Amnesty International's interview with M on 29 March 2009.

<sup>39</sup> Amnesty International's interview with M on 29 March 2009.

<sup>40</sup> Amnesty International's interview with K on 29 March 2009.

<sup>41</sup> Amnesty International's interview with K on 29 March 2009.

<sup>42</sup> Amnesty International's interview with K on 29 March 2009.

<sup>43</sup> Amnesty International's interview with L on 29 March 2009.

<sup>44</sup> Amnesty International's interview with L on 29 March 2009.

<sup>45</sup> Amnesty International's interview with L on 29 March 2009.

<sup>46</sup> Amnesty International's interview with L on 29 March 2009.

<sup>47</sup> Hai Nan [海蓝], "Juyuan Middle School parents locked up for study session after petitioning" [都江堰

聚源中学数名遇难学生家长因上访被关进学习班], Radio Free Asia [自由亚洲电台], 14 October 2008, [http://www.rfa.org/cantonese/news/earthquake\\_students-10142008122009.html?searchterm=None&encoding=simplified](http://www.rfa.org/cantonese/news/earthquake_students-10142008122009.html?searchterm=None&encoding=simplified), accessed 9 April 2009.

<sup>48</sup> Amnesty International's interview with H on 21 March 2009.

<sup>49</sup> Amnesty International's interview with H on 21 March 2009.

<sup>50</sup> Amnesty International's interview with H on 21 March 2009.

<sup>51</sup> Amnesty International's interview with H on 21 March 2009.

<sup>52</sup> Convention on the Rights of the Child, adopted by United Nations General Assembly resolution 44/25 of 20 November 1989, entered into force on 2 September 1990, art. 37, available at: <http://www2.ohchr.org/english/law/crc.htm>, accessed 8 April 2009.

<sup>53</sup> National People's Congress [全国人民代表大会], Constitution of the People's Republic of China (1982) (hereinafter Constitution) [中华人民共和国宪法(1982 修订)], promulgated and effective on 4 December 1982, amended on 12 April 1988, 29 March 1993, 15 March 1999 and 14 March 2004, art. 37, available at: [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm) (in English) and [http://www.gov.cn/gongbao/content/2004/content\\_62714.htm](http://www.gov.cn/gongbao/content/2004/content_62714.htm) (in Chinese), accessed 30 March 2009.

<sup>54</sup> National People's Congress [全国人民代表大会], Criminal Procedure Law of the People's Republic of China (1996) (hereinafter Criminal Procedure Law) [中华人民共和国刑事诉讼法 (1996 修订)], promulgated 17 March 1996, effective 1 January 1997, art. 64, available at: [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384067.htm](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](http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/legal/2003-01/21/content_699668.htm) (in Chinese), accessed 30 March 2009.

<sup>55</sup> Standing Committee of National People's Congress [全国人民代表大会常务委员会], Public Order Administrative Punishment Law [中华人民共和国治安管理处罚法], promulgated on 28 August 2005, effective on 1 March 2006, art. 96, available at: [http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content\\_1384114.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384114.htm) (in English) and [http://www.chinacourt.org/flwk/show1.php?file\\_id=104073](http://www.chinacourt.org/flwk/show1.php?file_id=104073) (in Chinese), accessed 13 April 2009.

<sup>56</sup> The Re-education Through Labour system is built upon these three major regulations: 1/ Decision of the State Council on the Question of Re-education Through Labour; 2/ Additional Decision of the State Council on the Question of Re-education Through Labour; 3/ Pilot Methods for Re-education Through Labour. See State Council [国务院], "Decision of the State Council on the Question of Re-education Through Labour" [国务院关于劳动教养问题的决定的决议], promulgated and effective on 3 August 1957, approved by the Standing Committee of the National People's Congress on 1 August 1957, available at: <http://review.jcrb.com/200803/ca683927.htm> (in Chinese) and [http://www.novexc.com/rehabilitation\\_t\\_labour.html](http://www.novexc.com/rehabilitation_t_labour.html) (Novexc.com unofficial English translation); State Council [国务院], Additional Decision of the State Council on the Question of Re-education Through Labour [国务院关于劳动教养的补充规定], promulgated and effective on 29 November 1979, approved by the Standing Committee of the National People's Congress on 29 November 1979, available at: [http://www.legalinfo.gov.cn/moj/ldjyglj/2007-05/16/content\\_19616.htm](http://www.legalinfo.gov.cn/moj/ldjyglj/2007-05/16/content_19616.htm) (in Chinese) and [http://www.novexc.com/supp\\_rehib\\_through\\_labor.html](http://www.novexc.com/supp_rehib_through_labor.html) (Novexc.com unofficial English translation); Ministry of Public Security [公安部], "Pilot Methods for Re-education Through Labour" [劳动教养试办法], promulgated via State Council on 21 January 1982, available at: [http://www.legalinfo.gov.cn/big5/ldjyglj/2003-05/28/content\\_19617.htm](http://www.legalinfo.gov.cn/big5/ldjyglj/2003-05/28/content_19617.htm). All accessed 20 April 2009.

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<sup>57</sup> Public Order Administrative Punishment Law, art. 96.

<sup>58</sup> Amnesty International has long-standing concerns about the Re-education Through Labour. The organization considers it as a system of arbitrary detention and is incompatible with international human rights law and standards. Hundreds of thousands of people are believed to be held in Re-education Through Labour facilities across the country as a punishment for so-called minor offences which are not deemed serious enough to be punished under the Criminal Law. Periods of Re-education Through Labour, ranging from one to three years and extendable for a further year, are imposed by the police without charge, trial or judicial review. These periods are much higher than minimum penalties under the formal Criminal Law. Chinese legal reformists have raised serious concerns about the unchecked power of the police in imposing such punishments. Amnesty International is also concerned that those held in Re-education Through Labour facilities are at high risk of torture or ill-treatment, particularly if they refuse to acknowledge their "offending" behaviour, recant their beliefs or resist "reform". For more information, see Amnesty International, *Abolishing "Re-education Through Labour" and other forms of punitive administrative detention: An opportunity to bring the law into line with the International Covenant on Civil and Political Rights* (Index: ASA 17/016/2006).

<sup>59</sup> National People's Congress, Administrative Procedure Law of the People's Republic of China [中华人民共和国行政诉讼法], promulgated 4 April 1989, effective 1 October 1990, art. 49, available at: [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383912.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383912.htm) (in English) [http://www.chinacourt.org/flwk/show.php?file\\_id=8970](http://www.chinacourt.org/flwk/show.php?file_id=8970) (in Chinese), both accessed 15 April 2009 and Standing Committee of the National People's Congress, Civil Procedure Law of the People's Republic of China [中华人民共和国民事诉讼法], promulgated and effective on 9 April 1991, amended on 28 October 2007, arts. 101, 102, 104 and 105, available at: [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383880.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383880.htm) (in English) and [http://www.chinacourt.org/flwk/show.php?file\\_id=122225](http://www.chinacourt.org/flwk/show.php?file_id=122225) (in Chinese), accessed 30 March 2009.

<sup>60</sup> Article 23 of Public Order Administrative Punishment Law states that: "A person who commits one of the following acts shall be given a warning or be fined not more than RMB 200 yuan (US\$ 29); and if the circumstances are relatively serious, he shall be detained for not less than 5 days but not more than 10 days and may, in addition, be fined not more than 500 yuan (US\$73):

- (1) disturbing the order of government departments, public organizations, enterprises or institutions, thus making it impossible for work, production, business operation, medical care, teaching or scientific research to go on normally but not having caused serious losses;
- (2) disturbing the public order at stations, ports, wharves, airports, department stores, parks, exhibition halls or other public places;
- (3) disturbing the public order on board of buses, trolleybuses, trains, ships, aircrafts and other means of public transportation;
- (4) illegally intercepting or forcibly boarding or holding on to motor vehicles, ships, aircrafts and other means of public transportation, thus hampering the normal operation of the means of public transportation; or
- (5) disrupting the order of elections conducted according to law.

Where the acts mentioned in the preceding paragraphs are committed by a crowd, the ringleader shall be detained for not less than 10 days but not more than 15 days and may, in addition, be fined not more than 1,000 yuan (US\$146)."

<sup>61</sup> Hai Nan [海蓝], "Earthquake parents reveal detention details" [地震遇难学生家长谈被拘押的经过], Radio Free Asia [自由亚洲电台], 23 October 2008, [http://www.rfa.org/cantonese/news/earthquake\\_students-10232008111830.html?searchterm=None&encoding=simplified](http://www.rfa.org/cantonese/news/earthquake_students-10232008111830.html?searchterm=None&encoding=simplified), accessed 9 April 2009 (Hai Nan, "Earthquake parents reveal detention details" (in Chinese)).

<sup>62</sup> Hai Nan, "Earthquake parents reveal detention details" (in Chinese).

<sup>63</sup> Amnesty International's interview with H on 21 March 2009.

<sup>64</sup> Amnesty International's interview with H on 21 March 2009.

<sup>65</sup> Amnesty International's interview with H on 21 March 2009.

<sup>66</sup> Amnesty International's interview with H on 21 March 2009.

<sup>67</sup> Amnesty International's interview with H on 21 March 2009.

<sup>68</sup> Amnesty International's interview with H on 21 March 2009.

<sup>69</sup> Amnesty International's interview with H on 21 March 2009.

<sup>70</sup> Amnesty International's interview with H on 21 March 2009.

<sup>71</sup> Amnesty International's interview with G on 20 March 2009.

<sup>72</sup> Amnesty International's interview with J on 23 March 2009.

<sup>73</sup> Amnesty International's interview with J on 23 March 2009.

<sup>74</sup> Amnesty International's interview with H on 21 March 2009.

<sup>75</sup> Amnesty International's interview with H on 21 March 2009.

<sup>76</sup> Amnesty International's interview with H on 21 March 2009.

<sup>77</sup> Amnesty International's interviews with Lawyers A and C on 20 and 30 March 2009.

<sup>78</sup> Amnesty International's interview with Lawyer C on 30 March 2009.

<sup>79</sup> Amnesty International's interviews with lawyers A, B and C on 20, 26 and 30 March 2009 and legal scholar E who visited the earthquake affected regions in 2008 on 19 March 2009.

<sup>80</sup> Amnesty International's interview with N on 31 March 2009.

<sup>81</sup> Amnesty International's interviews with Lawyers A, B and C on 20, 26 and 30 March 2009.

<sup>82</sup> Amnesty International's interview with Lawyer C on 30 March 2009.

<sup>83</sup> Amnesty International's interview with Lawyer A on 20 March 2009.

<sup>84</sup> Standing Committee of the National People's Congress [全国人民代表大会常务委员会], Law on Lawyers of the People's Republic of China (2007) (hereinafter Law on Lawyers) [中华人民共和国律师法 2007 年修订], promulgated on 28 October 2007, effective on 1 June 2008, art. 25, available at: [http://www.gov.cn/fjfg/2007-10/28/content\\_788495.htm](http://www.gov.cn/fjfg/2007-10/28/content_788495.htm), accessed 2 April 2009.

<sup>85</sup> Law on Lawyers, art. 40.

<sup>86</sup> Law on Lawyers, art. 48.

<sup>87</sup> Amnesty International's interview with Lawyer C on 30 March 2009.

<sup>88</sup> The open letter was initially signed by 18 lawyers and legal consultants and is available at: <http://www.chrlcg-hk.org/phpbb/viewtopic.php?t=4476> (in Chinese) and [http://www.hrichina.org/public/contents/press?revision\\_id=48361&item\\_id=48358](http://www.hrichina.org/public/contents/press?revision_id=48361&item_id=48358) (English translation by Human Rights in China), both accessed 1 April 2009. For information on intimidation of signatories of the open letter, see China Human Rights Defenders, "Tibetans Sentenced without Fair Trial; Lawyers Offering Aid Face Punishment," China Human Rights Defenders website, 2 May 2009, [http://crd-net.org/Article/Class9/Class15/200805/20080502162343\\_8542.html](http://crd-net.org/Article/Class9/Class15/200805/20080502162343_8542.html), accessed 1 April 2009, "Chinese Authorities Warn Lawyers Not to Help Arrested Tibetans" [内地律师协助藏民遭警告], *Apple Daily* [苹果日报], 9 April 2008; Han Qing [含青], "Pressure on Lawyers Wishing to Provide Legal Services to Arrested Tibetans" [律师愿为被捕藏民提供法律帮助受打压], Radio Free Asia [自由亚洲电台], 7 May 2008, <http://www.rfa.org/mandarin/yataibaodao/lawyer-05072008111834.html>, accessed 1 April 2009.

<sup>89</sup> The requirement for annual review and registration of lawyers is stipulated under Ministry of Justice's Methods for the Management of Lawyers' Practice and Methods for the Management of Lawyers' Professional Licenses. These regulations require lawyers to apply to the justice bureau through the law firms where they are employed. The applicant lawyers must submit a number of documents to support their application, for example, a summary of their work over the past year and a report of how the lawyers have complied with their professional ethics and discipline. The local justice bureau then issues their opinion before transferring the application to a higher level for license renewal approval. If approval for re-registration is denied, the professional license will become invalid. See 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/xfq/gwybmzg/200902/20090200128182.shtml>, accessed 2 April 2009 and Ministry of Justice, 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](http://www.gx.xinhuanet.com/misc/2006-09/27/content_8141782.htm), accessed 2 April 2009.

<sup>90</sup> The requirement for annual review of law firms is stipulated under Ministry of Justice's Methods for the Management of Law Firms and Methods for the Management of the Registration of Law Firms. Under these two regulations, the annual review of law firms takes place between March and May each year. Law firms need to submit to the local judicial department several documents. The judicial department in the locality will review the documents and send their opinion to the provincial justice bureau. Law firms that fail to pass the annual review are not allowed to continue their business. See 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111号], promulgated and effective on 18 July 2008, art. 43, available at: [http://www.legalinfo.gov.cn/moj/2008zcfg/2008-07/22/content\\_906515.htm](http://www.legalinfo.gov.cn/moj/2008zcfg/2008-07/22/content_906515.htm), accessed 2 April 2009 and 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/lsgzgs/2003-03/31/content\\_21532.htm](http://www.legalinfo.gov.cn/big5/lsgzgs/2003-03/31/content_21532.htm), accessed 2 April 2009.

<sup>91</sup> Amnesty International's interview with Teng Biao on 13 April 2009.

<sup>92</sup> Ministry of Justice [司法部], "Methods for the Management of Part-time Lawyers" [兼职从事律师职业人员管理办法], Order No. 47 [司法部令第47号], promulgated and effective on 25 November 1996, art.

5, available at: <http://www.yfzs.gov.cn/gb/info/cxls/zygf/2006-11/08/1643202571.html>, accessed 13 April 2009.

<sup>93</sup> Hai Nan [海蓝], "Parents of Fuxin No. 2 Primary Schools Beichuan sue over school collapse" [绵竹富新二小遇难学生家长提起诉讼], Radio Free Asia [自由亚洲电台], 3 December 2008, [http://www.rfa.org/cantonese/news/earthquake\\_students-12032008101342.html?searchterm=None&encoding=simplified](http://www.rfa.org/cantonese/news/earthquake_students-12032008101342.html?searchterm=None&encoding=simplified), accessed 9 April 2009; Hai Nan [海蓝], "Authorities threaten parents who sue over school collapse" [提出诉讼的绵竹遇难学生家长受到当局威胁], Radio Free Asia [自由亚洲电台], 8 December 2009, [http://www.rfa.org/cantonese/news/earthquake\\_students-12082008100311.html?searchterm=None&encoding=simplified](http://www.rfa.org/cantonese/news/earthquake_students-12082008100311.html?searchterm=None&encoding=simplified), accessed 9 April 2009; Edward Wong, "Parents of schoolchildren killed in China quake confirm lawsuit," *The New York Times*, 23 December 2008, "China quake lawsuit rejected," Associated Press via The Straits Times, 24 December 2009.

<sup>94</sup> Sichuan Province Higher People's Court [四川省高级人民法院], "Sichuan Province Higher People's Court's Notice Regarding Reinforcement of Post-Earthquake Trial Work" [四川省高级人民法院关于加强地震灾害后审判工作的通知], Document No. 221 (2008) [川高法[2008]221号], 2 June 2008, art. 2, available at: [http://www.mdshnx.com/law/sfjs/sfwj\\_dfgy/sfwj\\_sc08-cgf221.htm](http://www.mdshnx.com/law/sfjs/sfwj_dfgy/sfwj_sc08-cgf221.htm), accessed 7 April 2009 (Sichuan Province Higher People's Court's Notice Regarding Reinforcement of Post-Earthquake Trial Work).

<sup>95</sup> Sichuan Province Higher People's Court's Notice Regarding Reinforcement of Post-Earthquake Trial Work, art. 2.

<sup>96</sup> "Mass cases" is a term used by the authorities to refer to cases involving more than 10 plaintiffs. See All-China Lawyers Association [中华全国律师协会], "Guiding Opinion on Lawyers Handling Mass Cases," [关于律师办理群体性案件指导意见], 20 March 2006, art. 1, para. 1, 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> (unofficial English translation by Human Rights Watch), both accessed 8 April 2009.

<sup>97</sup> Sichuan Province Higher People's Court's Notice Regarding Reinforcement of Post-Earthquake Trial Work, art. 3.

<sup>98</sup> Sichuan Province Higher People's Court's Notice Regarding Reinforcement of Post-Earthquake Trial Work, art. 11.

<sup>99</sup> Sichuan Province Higher People's Court [四川省高级人民法院], "Sichuan Province High People's Court's Notice Regarding Establishing a Reporting System and a System for Legal Requests for Clarification in Earthquake Disaster-Related Cases" [四川省高级人民法院关于建立涉地震灾害案件报告制度和法律适用请示制度的通知], Document No. 238 (2008) [川高法[2008]238号], 13 June 2008, available at: [http://www.mdshnx.com/law/sfjs/sfwj\\_dfgy/sfwj\\_sc08-cgf221.htm](http://www.mdshnx.com/law/sfjs/sfwj_dfgy/sfwj_sc08-cgf221.htm), accessed 7 April 2009.

<sup>100</sup> Sichuan Higher People's Court [四川省高级人民法院], "Sichuan Province Higher People's Court's No. 1 Opinion Regarding the Handling of Cases Reported from Lower-level Courts Related to 12 May Massive Earthquake" [四川省高级人民法院关于对上报的涉及“5.12”特大地震灾害案件的处理意见(一)], Document No. 321 (2008) [川高法[2008]321号], 5 August 2008, para. 1, available at: [http://www.mdshnx.com/law/sfjs/sfwj\\_dfgy/sfwj\\_sc08-cgf321.htm](http://www.mdshnx.com/law/sfjs/sfwj_dfgy/sfwj_sc08-cgf321.htm), accessed 7 April 2009 (Sichuan Province Higher People's Court's No. 1 Opinion Regarding the Handling of Cases Reported from Lower-level Courts Related to 12 May Massive Earthquake).

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- <sup>101</sup> Sichuan Province Higher People's Court's No. 1 Opinion Regarding the Handling of Cases Reported from Lower-level Courts Related to 12 May Massive Earthquake, arts. 1, 2 and 8.
- <sup>102</sup> Sichuan Province Higher People's Court's No. 1 Opinion Regarding the Handling of Cases Reported from Lower-level Courts Related to 12 May Massive Earthquake, arts. 4, 6 and 7.
- <sup>103</sup> Amnesty International's interviews with lawyers A, B and C on 20, 26 and 30 March 2009 and legal scholar E who visited the earthquake affected regions in 2008 on 19 March 2009.
- <sup>104</sup> Amnesty International's interview with legal scholar E who visited the earthquake affected regions in 2008 on 19 March 2009.
- <sup>105</sup> Amnesty International's interview with Lawyer C on 30 March 2009.
- <sup>106</sup> Amnesty International's interview with Lawyer A on 20 March 2009.
- <sup>107</sup> Amnesty International's interviews with F, H, J, K, L and M on 16, 21, 23 and 29 March 2009.
- <sup>108</sup> Amnesty International's interview with H on 21 March 2009.
- <sup>109</sup> Amnesty International's interview with H on 21 March 2009.
- <sup>110</sup> Amnesty International's interview with K on 29 March 2009.
- <sup>111</sup> Amnesty International's interview with M on 29 March 2009.
- <sup>112</sup> Amnesty International's interview with lawyers A, B and C on 20, 26 and 30 March 2009.
- <sup>113</sup> Amnesty International's interview with Lawyer A on 20 March 2009.
- <sup>114</sup> Amnesty International's interviews with F, K and M on 16 and 29 March 2009.
- <sup>115</sup> Amnesty International's interview with F on 16 March 2009.
- <sup>116</sup> Amnesty International's interview with F on 16 March 2009.
- <sup>117</sup> Amnesty International's interview with M on 29 March 2009.
- <sup>118</sup> Amnesty International's interview with K on 29 March 2009.
- <sup>119</sup> Amnesty International's Urgent Action on 18 June 2008, <http://www.amnesty.org/en/library/info/ASA17/084/2008/en>; See Klaudia Lee, "Mother of quake activist makes third appeal for medical parole," *South China Morning Post*, 9 August 2008, Klaudia Lee, "Lawyers finally allowed to see arrested quake dissident," *South China Morning Post*, 24 September 2008; Yanxiu [严修], "Huang Qi's case already transferred to the procuratorate" [黄琦案已移交检察院], Radio Free Asia [自由亚洲电台], 11 December 2008, <http://www.rfa.org/mandarin/yataibaodao/weiquan-12112008091413.html>, accessed 6 April 2009; Jilisi [姬励思], "Court refuses to allow Huang Qi's lawyer view files due to 'secret' matter within" [法院以涉及機密爲由禁止律師複印黃琦卷宗], Radio Free Asia [自由亚洲电台], 3 February 2009, [http://www.rfa.org/cantonese/news/dissident\\_huangqi-02032009095330.html](http://www.rfa.org/cantonese/news/dissident_huangqi-02032009095330.html), accessed 6 April 2009; Audra Ang, "China to try critic of government's quake response," *Washington Post*, 2 February 2009.
- <sup>120</sup> Gai Lai, "Quake teacher detained," Sarah Jackson-Han trans., Radio Free Asia, 28 June 2008, <http://www.rfa.org/english/news/china/detain-06282008080740.html>, accessed 26 February 2009; Christ Buckley, "China quake school critic receives one-year sentence: group," Reuters, 29 July 2008, <http://www.reuters.com/article/GCA-China/idUSPEK28682720080730>, accessed 6 April 2009. Human

Rights in China, "Sichuan teacher, Liu Shaokun, was released to serve his reeducation-through-labor sentence outside labour camp," 26 September 2008, [http://hrichina.org/public/contents/press?revision\\_id=147947&item\\_id=68297](http://hrichina.org/public/contents/press?revision_id=147947&item_id=68297), accessed 8 April 2009.

<sup>121</sup> Amnesty International's Urgent Action on 2 April 2009, <http://www.amnesty.org/en/library/info/ASA17/014/2009/en>.

<sup>122</sup> Hai Nan [海蓝], "Beichuan parents' representative He Hongchun indicted" [北川遇难学生家长代表何洪春被正式起诉], Radio Free Asia [自由亚洲电台], 20 March 2009, [http://www.rfa.org/cantonese/news/earthquake\\_families-03202009124859.html?encoding=traditional](http://www.rfa.org/cantonese/news/earthquake_families-03202009124859.html?encoding=traditional), accessed 23 March 2009; Hai Nan [海蓝], "Beichuan parents' representative He Hongchun's case postponed" [北川遇难学生家长代表何洪春案被延期], Radio Free Asia [自由亚洲电台], 2 April 2009, [http://www.rfa.org/cantonese/news/earthquake\\_students-04022009113754.html?encoding=simplified](http://www.rfa.org/cantonese/news/earthquake_students-04022009113754.html?encoding=simplified), accessed 3 April 2009; Amnesty International's interview with one of He Hongchun's lawyer on 17 April 2009.

<sup>123</sup> International Covenant on Civil and Political Rights (hereinafter ICCPR), adopted by United Nations General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force on 23 March 1976, art. 2, para. 3, available at: <http://www2.ohchr.org/English/law/ccpr.htm>, accessed 8 April 2009.

<sup>124</sup> Convention on the Rights of the Child, art. 39.

<sup>125</sup> Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (hereinafter Convention against Torture), adopted by United Nations General Assembly resolution 39/46 of 10 December 1984, entered into force on 26 June 1987, arts. 13 and 14, available at: <http://www2.ohchr.org/english/law/cat.htm>, accessed 8 April 2009.

<sup>126</sup> International Convention on the Elimination of All Forms of Racial Discrimination, adopted by United Nations General Assembly resolution 2106 (XX) of 21 December 1965, entered into force on 4 January 1969, available at: <http://www2.ohchr.org/english/law/cerd.htm>, accessed 8 April 2009.

<sup>127</sup> China signed the ICCPR on 5 October 1998. It ratified the Convention on the Rights of the Child on 2 March 1992, Convention against Torture on 4 October 1988 and International Convention on the Elimination of All Forms of Racial Discrimination on 29 December 1981. See United Nations Treaty Collection website: <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=322&chapter=4&lang=en>, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=133&chapter=4&lang=en>, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=129&chapter=4&lang=en>, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=319&chapter=4&lang=en>, all accessed 8 April 2009.

<sup>128</sup> For the purposes of this document, it should be noted that Article 3 (3) of the Convention on the Rights of the Child states: "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

<sup>129</sup> See for instance Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly resolution 40/34 of 29 November 1985, available at: <http://www.un.org/documents/ga/res/40/a40r034.htm>; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious



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Violations of International Humanitarian Law, adopted and proclaimed by the United Nations General Assembly resolution 60/147 of 16 December 2005, available at: <http://www2.ohchr.org/english/law/remedy.htm>. See also United Nations Commission on Human Rights, Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, available at: <http://www.derechos.org/nizkor/impu/principles.html>, all accessed 15 April 2009.

<sup>130</sup> National People's Congress [全国人民代表大会], General Principles of the Civil Law of the People's Republic of China [中华人民共和国民法通则], promulgated on 12 April 1986, effective on 1 January 1987, available at: [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383941.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm) (in English) and [http://www.chinacourt.org/flwk/show.php?file\\_id=5139](http://www.chinacourt.org/flwk/show.php?file_id=5139) (in Chinese), accessed 30 March 2009.

<sup>131</sup> Supreme People's Court [最高人民法院], Supreme People's Court's Interpretation of Certain Issues Regarding the Application of Law in Hearing Cases for Damages for Personal Injuries [最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释], Doc.20 (2003) [法释[2003]20号], promulgated on 28 December 2003, effective on 1 May 2004, available at: [http://www.chinacourt.org/flwk/show1.php?file\\_id=90488](http://www.chinacourt.org/flwk/show1.php?file_id=90488), accessed 30 March 2009 (Supreme People's Court's Interpretation of Certain Issues Regarding the Application of Law in Hearing Cases for Damages for Personal Injuries).

<sup>132</sup> In civil litigations, "close relatives" refer to parents, grandparents, spouse, brothers and sisters, children and grandchildren. See Supreme People's Court [最高人民法院], Supreme People's Court's Opinion of Certain Issues Regarding the Implementation of the General Principles of the Civil Law of the People's Republic of China (Trial) [最高人民法院关于贯彻执行《中华人民共和国民法通则》若干问题的意见(试行)], promulgated and effective on 26 January 1988, art. 12, available at: [http://www.chinacourt.org/flwk/show1.php?file\\_id=7385](http://www.chinacourt.org/flwk/show1.php?file_id=7385), accessed 30 March 2009.

<sup>133</sup> Supreme People's Court's Interpretation of Certain Issues Regarding the Application of Law in Hearing Cases for Damages for Personal Injuries, art. 1.

<sup>134</sup> Civil Procedure Law, art. 108.

<sup>135</sup> Criminal Procedure Law, art. 84.

<sup>136</sup> Criminal Procedure Law, art. 87.

<sup>137</sup> Criminal Procedure Law, arts. 88 & 170.

<sup>138</sup> National People's Congress, Criminal Law of the People's Republic of China (1997) (hereinafter Criminal Law) [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, Arts. 382 & 384, 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 13 April 2009.

<sup>139</sup> Criminal Law, art. 137.

<sup>140</sup> Criminal Law, art. 138.

<sup>141</sup> Criminal Law, art. 397.

<sup>142</sup> Constitution, art. 41.

<sup>143</sup> State Council, Regulations on Letters and Visits (2005) (hereinafter Regulations on Letters and Visits) [信访条例], promulgated on 5 January 2005, effective on 1 May 2005, available at: [http://www.gjxfj.gov.cn/2006-03/07/content\\_6399309.htm](http://www.gjxfj.gov.cn/2006-03/07/content_6399309.htm) (in English) and [http://www.gjxfj.gov.cn/2005-01/18/content\\_3583093.htm](http://www.gjxfj.gov.cn/2005-01/18/content_3583093.htm) (in Chinese), accessed 30 March 2009.

<sup>144</sup> For example, Beijing, Shanghai, Jiangxi province, Hebei province, etc. have their own legal provisions rules regulating petitioning in their locality. In some places, the local regulations are harsher than the national one. Take Beijing's as an example, it lists 9 types of petitioning behaviour which are banned including petitioning in a venue outside the petitioning office whereas the scope in the national regulation is narrower and listed only five. See Regulations on Letters and Visits, art. 20 and Regulation on Letters and Visits of the Beijing Municipal (2006) [北京市信访条例(2006 修订)], promulgated 15 September 2006, effective 1 January 2007, art. 58, available at: [http://www.gjxfj.gov.cn/2006-11/07/content\\_8455385.htm](http://www.gjxfj.gov.cn/2006-11/07/content_8455385.htm), accessed 30 March 2009.

<sup>145</sup> Regulations on Letters and Visits, art. 3.

<sup>146</sup> Regulations on Letters and Visits, art. 16.

# APPENDIX I: SICHUAN PROVINCE HIGHER PEOPLE'S COURT'S NOTICE REGARDING REINFORCEMENT OF POST-EARTHQUAKE TRIAL WORK

Chuangao [2008] No.221

2 June 2008

To all intermediate courts in the province and Chengdu Railway Transportation Intermediate Court,

With the massive earthquake in Wenchuan on 12 May, parts of the province have been seriously hit which in turn impacts greatly on the normal trial procedures of the people's courts. Civil disputes and criminal offences stemming from the earthquake have already emerged, bringing to court a number of disaster-related civil cases involving disputes over tenancy contracts, property sales and compensation for personal injuries as well as criminal cases of theft, robbery and fraud during the chaos. In the wake of development and changes of situation, judicial needs will continue to increase dramatically in the aftermath of the earthquake. Civil legal problems related to marriage and family, property rights, property sales, insurance contracts and personal injuries are extensive while administrative disputes concerning certification of work injuries, eviction and resettlement, administrative requisition, sanitation and epidemic prevention are significantly on the rise. The trial work places the people's courts under great pressure, with huge challenges caused by the earthquake including loss of object of litigation, inability of the individuals concerned to take part in the litigation and inability to physically deliver verdict documents. In trying to meet the needs due to changes of the trial work, all levels of people's courts in the province must, under the leadership of the Party committees, act strictly to fully exert their judicial functions. Holding trials and enforcing judgements provide strong legal protection for restoring production, livelihood and order, and maintaining social stability in disaster-stricken areas.

## 1. Attach great importance to trials and enforcement of disaster-related cases

All levels of people's courts must further strengthen political awareness and facilitate understanding of the overall situation, translating into action the handling of disaster-related cases and earnestly enhancing the sense of responsibility and emergency. For the trial and enforcement of these cases, courts should act with the overall public interests in mind and contribute to the social stability and fundamental interests of the public of disaster-stricken

areas, as well as to the consolidation of the accomplishments and smooth conduction of disaster relief work. In order to ensure timely handling of disaster-related cases and earthquake relief and post-disaster restoration and reconstruction, courts must emphasize these cases by placing them on their critical work agenda; strengthening leadership; organizing special taskforces and consolidating measures.

## 2. Accept disaster-related cases with caution

All levels of people's courts must completely recognize the particularity of disaster-related cases, examine all of them rigorously, carefully safeguard intake and accept prudently. The courts must fully acknowledge the complexity of these cases, consolidate coordination with government, relevant authorities and grass-root mediation groups, and adeptly apply integrated measures to resolve disputes appropriately prior to litigation. Particular attention must be given to avoid relying purely on law to handle disputes and thereby cause a chain reaction and which instils passivity across the overall work. When accepting major, sensitive and controversial cases, a report must be made to the provincial court in advance in order to coordinate the overall situation and unify law enforcement standards and measures.

## 3. Adopt integrated measures to resolve disaster-related disputes

All level of people's courts must recognize the importance of policy in dealing with disaster-related disputes, and take positive initiative to strengthen coordination among relevant government departments with integrated channels including administrative coordination, social assistance, mediation and judicial decisions. Importance must be placed on the special role of mediation in resolving disaster-related disputes and the "three in one" mechanism of mediation that integrates administrative mediation, people's mediation and judicial mediation, shall be actively adopted. Concerning sensitive and mass cases, courts must first apply integrated mediation before resorting to litigation and should not render judgments just for judgments' sake to avoid inflicting new petitions involving legal procedures and lawsuits. All levels of people's courts must actively promote the use of integrated arbitration mechanisms established under the leadership of Party committees to make concerted efforts and achieve maximum unity between legal outcomes and social effectiveness in resolving disaster-related disputes.

## 4. Try cases speedily and enforce disaster-related case decisions

All levels of people's courts must guarantee timely handling of earthquake related cases, speedy trials and speedy enforcement of decisions. Judicial coordination by means of transferred, designated and hierarchical jurisdiction should be strengthened to resolve problem of inadequate trial capacity and facilitate the public to exercise their litigation rights for disaster-related cases. Special taskforces and dedicated personnel must be provided to cope with trial proceedings and enforcement of decisions to guarantee speedy and timely hearing of cases. Courts must reinforce judicial relief and expand the scope of legal aid for quake-affected individuals, and earnestly protect their litigation rights through active notification of judicial relief policies; application of postponement, reduction or exemption of litigation fees; and simplification and timely handling of examination processes. In order to fully safeguard quake-affected individuals' right to litigation, association with legal aid organizations must be strengthened to provide legal support for eligible individuals and

assigned lawyers.

#### 5. Crackdown on disaster-related crimes

All levels of people's courts must crackdown on all criminal activities that threaten the work of earthquake relief, rehabilitation and reconstruction to maintain social stability in disaster-stricken areas. The following criminal offences must be punished severely: destruction of public utilities on electricity, transport and telecommunications; fabrication and dissemination of false terrorist information; severe disruption of social order in disaster-stricken areas; theft, robbery, seizure and intentional damage of materials used for earthquake disaster relief; grave disturbance of market conditions for profiteering, hoarding, illegal operation and forced transactions; interruption of normal daily lives of quake-affected people; deliberate fabrication, dissemination of false terrorist information that threatens stability and affects relief, rehabilitation and reconstruction of disaster-stricken areas; production, sale or provision (in the name of disaster relief) of fake, shoddy products and medicine, or toxic or harmful food; graft of state personnel, embezzlement of funds and goods set aside for disaster relief, abuse of power or negligence of duties that will affect the sound implementation of relief, rehabilitation and reconstruction work; and harm to public hygiene which prevents the cure of contagious diseases. During the unique period of time with exceptional cases, special guidelines should be applied to effectively and forcefully crackdown on crimes threatening disaster relief, rehabilitation and reconstruction, as well as to deter potential crimes and reassure the public. Courts must grasp accurately the criminal policy which stresses both leniency and severity, and apply on a case-by-case basis different treatment for crimes of different natures. Coordination should be enhanced among public security bureaus, procuratorates, judiciary and administration to speedily crackdown on crimes as well as guarantee quality of case handling.

#### 6. Handle disaster-related civil and administrative disputes properly

All levels of people's courts must act in compliance with law to try all disaster-related civil or administrative cases and promptly resolve any contradiction or disputes in disaster-stricken areas, thus defusing any public resentment. To defend effectively the legitimate rights of the public, while hearing any disaster-related civil case, special focus must be placed on dealing with those concerning: application for declaration of missing persons and death in which special procedures are applicable; legitimate civil rights of minors, elderly singles and earthquake-affected disabled persons; disputes over property rights and contracts with regard to the earthquake; disputes over compensation for personal injuries and insurance relating to the earthquake. Civil cases concerning guaranteeing of basic living conditions and resuming livelihood and production should be dealt with promptly and speedily. Greater efforts must be made to strengthen the mechanisms of mediation so that disputes are settled through mediation or resolution. In relation to disaster-related administrative cases, while it is crucial to protect the legitimate rights of quake-affected individuals, courts must actively support administration authorities to exercise their functions and power in the process of disaster relief, rehabilitation and reconstruction as well as preserve good management and social order within disaster-affected areas. To avoid intensifying contradictions and breeding great mischief, emphasis must be placed on managing mass disputes and cases, striving for education and reasoning, and heeding working style.

## **7. Reinforce implementation of disaster-related case decisions**

All levels of people's courts must adopt non-traditional measures to strengthen enforcement of decisions and ensure prompt realization of legal rights and interests for disaster-related cases. With further improvement on the working mechanism of "leadership of Party committees, supervision of National People's Congress (NPC), support from government, participation of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) and host by courts", implementation of disaster-related case decisions are reinforced. Courts must assign specialists who should actively investigate assets of the person against whom the judgement is being executed, adopt measures to close, seize, freeze or auction properties; and pay the individuals concerned. In the event of critical disaster-related cases which need the protection from adopting measures of "property preservation" or "advance verdict execution", courts must speed up the examination and implementation of these measures, thus providing prompt and effective protection for the individuals concerned. Meanwhile, courts must not adopt measures of property preservation or mandatory enforcement to close, seize, freeze or allot funds and materials set aside for disaster relief, rehabilitation and reconstruction.

## **8. Intensify legal publicity and education**

All levels of people's courts must synthesize adjudication in disaster-related cases to strengthen publicity of the legal system. With multiple means and introduction of "yard court, "tent court" and "vehicle court" facilities, court sessions are open in resettlement areas which are close to where disaster-affected victims live. Greater efforts should be made to reinforce open trials. Except for cases where an open hearing is inappropriate as prescribed by law, courts must try all disaster-related cases openly and encourage the public to take part in and observe the trial proceedings. The choice and use of typical cases for the popularization of legal education helps extend the social impacts of case handling and strength public awareness to observe the law and legally resolve disputes. Publicity of special trial activities and typical law examples must be further promoted to properly guide public opinion, clarify law and dispute related rumour and understanding as well as dispel doubts of quake-affected victims. Courts should actively participate in and take concerted action for legal publicity and education; with the use of slogans and broadcasting publicize information of quake-affected areas and create a culture of the rule of law for disaster relief, rehabilitation and reconstruction.

## **9. Take initiative to provide legal services**

All levels of people's courts must take initiative to actively extend legal services to deliver the rule of law to the countryside, households and tents. In places where quake-affected individuals live, service points for legal advice should be established to organize regular activities focusing on legal publicity; create special newspaper columns and publish legal education information. Whereas at service points, assistance should be given in answering disaster-related queries; providing legal advice and support; raising public awareness to defend rights as prescribed by law; and guiding public to correctly exercise their rights. In light of the judicial needs of quake-affected victims, courts must introduce measures for victims' convenience and initiate further activities for litigation guidance and law interpretation. The active participation for integrated social security management and

extensive supervision provided to mediation or grass-root social security organizations must strengthen the foundation work and control of social security in disaster-stricken areas.

**10. Strengthen situational analysis and assessment of post-disaster trials**

With regard to disaster-related cases, all levels of people's courts must further enhance the investigation and analysis of trial work. Prior to trial proceedings, courts should conduct prompt situational analysis, grasp the whole situation and prepare for any emerging conditions or issues. Courts must earnestly look into any post-disaster legal issues and promptly reflect to the legislature and Supreme People's Court. In addition to unifying legal standards and strengthening trial supervision, courts must also review and promote trial experience to enhance the level and ability of handling cases. Courts must promptly analyze the problems arising during the trials for disaster-related cases and provide judicial recommendations to Party committees and the government to maximize the social effects of trials.

**11. Accept the leadership of the Party committees**

When dealing with disaster-related cases, all levels of people's courts must act accordingly under the unified leadership of the Party committees and Political Legal Committee (PLC), with supervision of NPC, support from the government and the coordination of all relevant departments. In order to gain their support for the creation of sound working mechanisms and structures to cope with disaster-related cases, all levels of people's courts must timely report to Party committees, PLC and the government, trial and enforcement of all disaster-related cases, as well as hot spots, obstacles and relevant work recommendations.

# **APPENDIX II: SICHUAN PROVINCE HIGHER PEOPLE'S COURT'S NOTICE REGARDING ESTABLISHING A REPORTING SYSTEM AND A SYSTEM FOR LEGAL REQUESTS FOR CLARIFICATION IN EARTHQUAKE DISASTER-RELATED CASES**

Chuangaofa [2008] No.238

13 June 2008

To all intermediate courts in the province and Chengdu Railway Transportation Immediate Court,

According to the "Sichuan Higher People's Court's Notice Regarding Reinforcement of Post-Earthquake Trial Work" (Chuangaofa [2008] No.221), the following notice was promulgated to strengthen the management and guidance of trial work after the earthquake and standardize the application of law:

1. All levels of people's courts must register, as soon as possible, all kinds of disputes stemming from the earthquake that are filed with the court and report to one court level above up to the provincial court level, before accepting them. The provincial court could therefore coordinate, strengthen their guidance and handle the disputes properly.
2. For questions of the application of the law in cases related to the earthquake, all levels of courts must strengthen their investigation and research. Cases in which the law is not clear or the legal principle needs to be standardized, must be reported to the provincial court promptly. If it is urgent, the grassroots courts in the earthquake-affected regions may report to the provincial court directly.



**3.** The reporting and application of the law is coordinated by the research office of the provincial court.

Contact: Li Kang

Telephone: 028-86960610

Fax: 028-86960614

# **APPENDIX III: SICHUAN HIGHER PEOPLE'S COURT'S NO. 1 OPINION REGARDING THE HANDLING OF CASES REPORTED FROM LOWER- LEVEL COURTS RELATED TO 12 MAY MASSIVE EARTHQUAKE**

Chuangaofa [2008] No.321

5 August 2008

Based on the requirements in the "Sichuan Province High People's Court's Notice Regarding Establishing a Reporting System and a System for Legal Requests for Clarification in Earthquake Disaster-Related Cases", as of 31 July 2008, all intermediate level people's courts reported to the provincial court a total of 130 cases stemming from the earthquake. They are from intermediate courts of Guangyuan, Mianyang, Deyang, Chengdu, Aba, Ya'an, Ziyang, Yibin, Suining and Ganzi. Major disputes are over tenancy contracts, contracts of property sales, compensation for personal injuries, tort liability, inheritance, labour disputes, compensation for damage to property, loans between individuals and insurance contracts. Most of these disputes are over tenancy contracts, contracts of property sales, and compensation for personal injuries and damage to property. Based on the nature, object and location of these cases, the 12 May Earthquake-related Legal Work Coordinating Committee of the provincial court has researched into the acceptance and handling of these cases, and provides the following opinions:

## **1. Disputes over tenancy contracts**

Courts may accept cases and dissolve contracts regarding requests for dissolution of tenancy contract if the building has completely collapsed or been certified as dangerous. Apart from these circumstances, the acceptance of cases and dissolution of contracts must be strictly controlled.

## **2. Disputes over tort liability**

It is inappropriate for courts to accept cases regarding compensation for damage to property caused by rescue teams when they carry out work instructed by the State Council Command and Control Centre for Earthquake Disaster Rescue & Relief Operation, for example, in demolishing dangerous buildings or repairing damaged roads. These cases are recommended to be centrally coordinated by the Centre for Earthquake Disaster Rescue & Relief Operation.

### **3. Disputes over succession and inheritance**

Courts should accept cases and provide settlements in accordance with the Law of Succession regarding disputes over inheritance of property if an ancestor's death was caused by the earthquake. Courts may, in principle, accept and actively conduct mediation on cases regarding disputes over pension for the family of the deceased, subsidy or relocation allowance.

### **4. Disputes over property sales contracts**

It is inappropriate for courts to accept cases regarding disputes over contracts of sales of property because issues surrounding the quality of construction and the passing of risk of immovable property are highly sensitive and involves a high level of policy consideration. These cases can only be handled after relevant departments have given further instructions.

### **5. Labour disputes**

Disputes over compensation for personal injuries of workers during the earthquake involve certification of work injuries and their benefits. These cases must first be handled by relevant government departments.

### **6. Disputes over compensation for personal injuries or damage to property**

It is not appropriate for courts to accept cases regarding actions for personal injuries or damage to property caused by the collapse of buildings during the earthquake. These cases can only be handled after relevant departments have given further instructions.

### **7. Disputes over insurance contract**

It is not appropriate for courts to accept cases regarding insurance contracts stemming from the earthquake. Earthquake is listed as an exemption clause in most of the insurance contracts and hence exempted from any liability of insurance. However, different sectors in the society have reacted strongly to these exemptions. These cases can only be handled after relevant departments have given further instructions.

### **8. Disputes over loans**

Courts may accept cases regarding loans between individuals that are small scale and may not cause negative reaction from the public.

Disputes stemming from the earthquake are special therefore courts should strengthen their investigation and research and actively pay attention to these cases. Courts should also

perform their adjudication function and handle disputes properly. However, the ability of judicial institutions to resolve these special disputes is limited. They must seek to resolve disputes through mediation, move towards establishing a system for settling multi-dimensional disputes, and handle disputes according to policy.

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