Public Health

Violent Medical Disputes as a Focal Public Health Issue

Incidents of violence against hospital personnel, some resulting in fatalities,1 galvanized top leadership to declare "no tolerance" for this increasing problem in China during the annual legislative meetings in March 2014.2 Medical professionals have linked ineffective medical dispute resolution mechanisms, among other factors, to this problem.3 Yet pressure from protests or the threat of protest in medical disputes have resulted in legal processes and government decisionmaking that give priority to "stability maintenance" over strengthening legal norms and public trust in hospitals and the courts, according to a U.S. scholar.4

Problems in Implementation of the PRC Mental Health Law

Implementation of the PRC Mental Health Law (MHL) during its first year was marred by reports of Chinese government officials forcibly committing petitioners to psychiatric facilities,5 despite the MHL's prohibition of such action.6 The Chinese government did not respond to a written question from a UN Committee as to "whether the 2012 Mental Health Law forbids involuntary psychiatric commitment for persons who do not suffer from any mental illness" prior to the review in May 2014 of China's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR) under its provision on the right to health.7 Forcibly committing individuals without mental illness to psychiatric facilities (bei jingshenbing) in China due to family8 or employment disputes,9 or as a public security tool against petitioners,10 Falun Gong practitioners,11 and political dissidents12 has been well documented in the past. The International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities prohibit arbitrary detention.13 In May, the UN Working Group on Arbitrary Detention censured China in an opinion on the case of Xing Shiku, a petitioner from Heilongjiang province, whom authorities have kept in a psychiatric facility for more than seven years, concluding that Xing's detention violated Articles 9 and 19 of the Universal Declaration of Human Rights.14

Domestic Chinese reports during this reporting year featured cases in which persons with mental illness or those who had been involuntarily committed had uneven access15 to legal protections and remedies provided for in the MHL.16 In the case of Wu Chunxia, a domestic violence survivor from Henan province whom public security officials forcibly committed to a psychiatric facility for 132 days in 2008 for petitioning,17 the Henan Province High People's Court upheld a lower court's decision in May 2014 that found the public security bureau's actions in 2008 violated the law.18 In another case, a court in Liaoning province initially rejected an administrative appeal by Liu Gang, a pig farmer who had been involuntarily committed in Shandong province twice—once in 2008 and again in 2009—for petitioning.19 Liu reportedly received 400,000 yuan (US$64,868) in late July from a court-mediated agreement.20 In a case described as the first under the MHL,21 a plaintiff in Shanghai municipality alleged a psychiatric facility had
deprived him of his personal freedom for more than 10 years because his brother refused to authorize his discharge and the facility would not release him on his own recognizance. A district court in Shanghai did not permit the lawsuit to be filed in May 2013 on the basis that the plaintiff “lack[ed] competence in civil matters” but allowed filing seven months later. A domestic Chinese human rights organization reported that the case went to trial on July 28, 2014.

Article 24 of the MHL stipulates implementation of a nationwide “surveillance network” that includes a “reporting system for severe mental health disorders” purportedly to provide “better medical treatment and help prevent [those with severe mental health disorders] from harming others.” An exposé in October 2013, however, described problems with a local effort to identify individuals with severe mental illness that predated passage of the MHL. In its 2012 mental health work plan, the public health bureau in Zhengzhou city in Henan directed government health workers to register individuals with severe mental disorders using a quota of two persons per 1,000 living in residential districts. Failure to meet the quota, according to the plan, would impact performance reviews of community health centers. Amid widespread criticism of Zhengzhou’s use of a quota, a spokesperson from the National Health and Family Planning Commission stressed statistical indicators are applicable only to provinces and province-level municipalities.

Public Health Advocacy and Health-Based Discrimination

HARASSMENT OF PUBLIC HEALTH ADVOCATES AND ORGANIZATIONS

The Commission observed reports of harassment and detention of public health advocates and organizations during this reporting year, including:

• On January 15, 2014, public security officials reportedly arrested Akbar Imin—a former employee of the health advocacy NGO Beijing Aizhixing Institute—on suspicion of “endangering state security.” Imin conducted outreach on HIV/AIDS prevention and harm reduction among the Uyghur community in Beijing municipality and Yunnan province. International observers suggested that his ethnicity might be a factor in his detention.

• Prominent health and rights advocate Hu Jia asserted that public security officials in Beijing kept him under “soft detention” (ruanjìn) at home from January 17 through June 8, 2014. Hu also reported that “plainclothes personnel” assaulted him on the street in mid-July after he met with a foreign filmmaker regarding the late activist Cao Shunli. Hu faced government harassment and imprisonment in the past in connection with his HIV/AIDS advocacy, though media outlets linked his recent detention to “stability maintenance” in the lead up to the 25th anniversary of the 1989 Tiananmen protests.

• Officials prevented HIV/AIDS advocates from leaving China to participate in international conferences in November 2013 and July 2014.
In May 2014, a court in Ruzhou city, Henan province, sentenced five persons living with HIV/AIDS to suspended prison terms that ranged from one year and six months to three years on a charge related to their petitioning in November 2013 for improved medical treatment and financial subsidies.

Beijing Aizhixing Institute reported that it closed its Beijing office in October 2013 due to “funding and the political environment, among other factors.”

In July 2014, public security officials arrested Chang Boyang, a human rights lawyer and the co-founder of the NGO Zhengzhou Yirenping, and later charged him with “illegal business operations.” Authorities also reportedly raided Zhengzhou Yirenping’s office twice in July, closed its organizational bank account, and required staff to list foreign donors.

ACCESS TO EDUCATION FOR PERSONS WITH DISABILITIES

The Chinese government continued administrative efforts to improve the right to education for persons with disabilities, such as a plan to raise the percentage of elementary school-age children with visual, hearing, and intellectual disabilities receiving compulsory education from current official estimates of 71.9 percent to more than 90 percent by 2016. The Ministry of Education (MOE) issued guidelines in March which included a provision that localities make the college-entrance exam—the key channel for determining whether and where students receive a college education in China—the key channel for determining whether and where students receive a college education in China—available in a format accessible to visually impaired students. Yet an advocate noted that the MOE did not adequately consider reasonable accommodations to facilitate test-taking, which resulted in difficulties for at least one blind test-taker. Physical examinations required for university enrollment, moreover, continue to be a basis to “deny enrollment in certain subjects if the applicants have certain disabilities.” In August 2014, for example, a microblog user publicized the case of a student from Fujian province whose college rescinded her admission for failing the physical exam. Following considerable criticism in social media, Xinhua reported education officials in Fujian facilitated the student’s admission into another college.

EMPLOYMENT DISCRIMINATION

Health-based employment discrimination is prohibited under Chinese law, yet the Civil Servant Recruitment Physical Examination Standards continued to be the basis to reject persons with a range of health conditions from employment in government service in this reporting year. An NGO report released in March 2014 pointed out that these standards are not in compliance with Chinese law or China’s international obligations, and close to 200 million people may be discriminated against as a result. The UN Committee that reviewed China’s compliance with the International Convention on Economic, Social and Cultural Rights expressed concern in May that the Chinese government is not meeting its own goal of reserving 1.5 percent of positions for persons with disabilities.
Notes to Section II—Public Health


5. UN GAOR, Committee on Economic, Social and Cultural Rights, List of Issues in relation to the Second Periodic Report of China (E/C.12/CHN/2) including Hong Kong, China (E/C.12/CHN-HKG/3) and Macao, China (E/C.12/CHN–MAC/2), adopted by the Pre-Sessional Working Group at Its 51st Session, para. 33; UN GAOR, Committee on Economic, Social and Cultural Rights, List of Issues in relation to the Second Periodic Report of China (E/C.12/CHN/2), including Hong Kong, China (E/C.12/CHN–HKG/3) and Macao, China (E/C.12/CHN–MAC/2), Addendum, Replies of China to the List of Issues, 27 January 14, paras. 204–08.


16 PRC Mental Health Law [Zhonghua renmin gongheguo jingshen weisheng fa], passed 26 October 12, effective 1 May 13, arts. 78, 82; Jeremy Daum, “Still Crazy After All These Years,” China Law Translate (blog), 20 May 13.


21 Zhang Wei, “First Lawsuit Under the Mental Health Law Is Finally Accepted for Filing After Seven Months” [‘Jingshen weisheng fa’ diyi an quan qu gi yue hou zhi ling ba lian], Legal Daily, 23 December 13; Equity and Justice Initiative, “One Person One Photo, Protect the Rights of ‘Persons With Mental Health Disorders’ Action Advocacy Appeal” [Yi ren yi zhaopian, baozhang ‘jingshen zhangai renshi’ quanyi huodong changyishu], 24 April 14.


23 Zhang Wei, “First Lawsuit Under the Mental Health Law, Case Finally Accepted for Filing After Seven Months” [‘Jingshen weisheng fa’ diyi an quan qu gi yue hou zhi ling ba lian], Legal Daily, 23 December 13; Luo Jieqi, “Involuntarily Committed for 10 Years, Lawsuit Against Psychiatric Hospital Allowed To File” [Fei ziyuan zhuyuan shi nian su jingshenbing yuan huo li’an], Caixin, 24 December 13; Ouyang Chenyu, “ ‘Proportional’ Mental Illness Quotas” [Tanpai jingshenbing zhibiao], Southern Metropolitan Daily, 9 October 13; Patrick Boehler, “You Are Falling Short of Your ‘Crazy Quota,” Zhengzhou Officials Warned,” South China Morning Post, 10 October 13.


26 Mentally-Ill Patients To Be Placed in Database,” Xinhua, 2 September 13.


36 Beijing Aizhixing Institute, “[China AIDS, 8078] Important!! Description of Aizhixing’s HIV/AIDS Prevention and Rights Outreach Among Ethnic Minority Populations” [‘China AIDS 8078’ zhongyao!! aizhixing guanyu zai shaoshu minzu renkou zhong kaizhan aizibing fangzhi he yu jian cai tong zhe de quanli], reprinted in China Aids Group Blogspot, 26 March 14. For more information on Aizhixing, see the Commission’s Political Prisoner Database record 2013-00249 on Ma Jianmin.


39 Beijing Aizhixing Institute, “[China AIDS: 8078] Important!! Description of Aizhixing’s HIV/AIDS Prevention and Rights Outreach Among Ethnic Minority Populations” [‘China AIDS 8078’ zhongyao!! aizhixing guanyu zai shaoshu minzu renkou zhong kaizhan aizibing fangzhi he yu jian cai tong zhe de quanli], reprinted in China Aids Group Blogspot, 26 March 14. For more information on Aizhixing, see the Commission’s Political Prisoner Database record 2013-00249 on Ma Jianmin.


52 Meng Zhaozi and Mi Yingting, “Internet News of ‘Disabled Female Student With College Exam Score of 549 Enrollment Revoked,’ School Says Not Convenient To Reveal Details of Physical Exam” [Wangchuan ‘canji nusheng gaokao 549 fen bei tuidang’ xiaofang cheng buhe piyu tijian xiejie], Xinhua, 4 August 14; Lin Changsheng, “Follow-Up on Disabled Student From Zhangzhou Whose College Revoked Her Admission, Education Controversy Triggered by ‘Failed Physical Exam’” [Zhangzhou canji kaosheng bei gaoxiao tuidang zhuzhong: ‘tijian bu hege’ yinf de jiaoyu fenzheng], People’s Daily, reprinted in NetEase, 5 August 14.

53 Jiang Liming, “Fujian Provincial Examination Institute Facilitates Disabled Student Liu Wanling’s Admission Into Xiamen University’s Jiageng Institute” [Fujian sheng kaoshiyuan xietiao xiada jiageng xueyuan luqu canji kaosheng liu wanling], Xinhua, 6 August 14.

54 See, e.g., PRC Law on the Protection of Persons with Disabilities [Zhonghua renmin gongheguo canjiren baozhang fa], passed 28 December 90, amended 24 April 08, effective 1 July 08, arts. 3, 30–40; PRC Employment Promotion Law [Zhonghua renmin gongheguo jujie cujin fa], passed 30 August 07, effective 1 January 08, arts. 3, 29, 30; State Council, Regulations on the Treatment and Control of HIV/AIDS [Aizibing fangzhi tiaoli], issued 29 January 06, effective 1 March 06, art. 3; State Council, Regulations on the Employment of Persons with Disabilities [Canjiren jujie tiaoli], issued 25 February 07, effective 1 May 07, arts. 3, 8.

55 Ministry of Human Resources and Ministry of Health, Civil Servant Recruitment Physical Examination Standards (Trial) [Gongwuyuan luyong tongyong biaozhun (shixing)], 17 January 05, reprinted in National Public Servant Net, 15 September 10. See Wan Jing, “Teacher Eligibility Standards in Many Places Permit Discrimination Against Persons with Disabilities, Disabled Persons Apply for Open Information” [Duodi jiaoshi tijian biaozhun cun canzhang qishi, canzhang renshi shenqing gongkai yiju], Legal Daily, reprinted in Eastday, 5 December 13. According to Legal Daily, at least 20 provinces have physical eligibility standards for teachers that discriminate against persons with disabilities.

56 “Second Instance Trial for First Case in Jiangsu of AIDS Employment Discrimination” [Jiangsu shouli aizi jiuye qishi an ershen], China Jiangsu Net, 19 November 13; Zhan Han, “Top Scholar in Civil Service Exam Sues Human Resources Bureau for Refusing To Hire Visually Impaired Person” [Gongwuyuan kaoshi zhuzhuang renren ren jiaoyu julu shizhang ren], Caixin, 26 May 14; Ye Yu, “Attention to International Persons With Disability Day, A Disabled Person Who Has Taught for 17 Years Not Able To Get Teacher Certificate” [Gaozi canjiren ri tebie guanzheng, cong jiao 17 nian canjiren jiaokou jiaoyu zhihe], Eastern Daily, 3 December 13.

57 Zhang Wei, “Civil Services Physical Examination Standards Are Suspected of Being Illegal, Directly Discriminate Against Close to 200 Million” [Gongwuyuan tongyong biaozhun bei zhi shexiang weishi, zhi jiaoyu jiaoyu renren jin 2 yi], Legal Daily, 26 March 14.

58 UN GAOR, Committee on Economic, Social and Cultural Rights, Concluding Observations on the Second Periodic Report of China, Including Hong Kong, China and Macao, China, adopted at its 52nd Session, 13 June 14, para. 18. The 1.5 percent minimum hiring quota for persons with disabilities is stipulated in State Council, Regulations on the Employment of Persons with Disabilities [Canjiren jujie tiaoli], issued 25 February 07, effective 1 May 07, arts. 3, 8.