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April 12, 2012

Members of the United Nations
Committee on the Rights of Persons with Disabilities
Office of the United Nations High
Commissioner for Human Rights (OHCHR)
52 rue des Pâquis
CH-1201 Geneva, Switzerland

Re: Pre-Sessional Review of China

Dear Committee Members:

We write in advance of the upcoming Committee on the Rights of Persons with Disabilities (Committee) pre-sessional review of China to highlight areas of concern that we hope will inform your consideration of the Chinese government's compliance with the Convention on the Rights of Persons with Disabilities (CRPD). This submission discusses violations of the rights of people with disabilities in China that are inconsistent with Articles 1, 3, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 21, 23, 24, 25, 26 and 31 of the CRPD.

This submission is based on the Human Rights Watch Report "*My Children have Been Poisoned*": *A Public Health Crisis in Four Chinese Provinces*, released on June 15, 2011,¹ and ongoing monitoring of the human rights situation in China.

In your upcoming Committee pre-sessional review of China, Human Rights Watch urges you to question the government of China about the following key issues, which at present seriously undermine the rights of persons with disabilities:

1. *Failure to provide access to information and services with respect to lead poisoning*
2. *Derogatory language*
3. *Right to safety during situations of risk and humanitarian emergencies*

Human Rights Watch, "*My Children have Been Poisoned*": *A Public Health Crisis in Four Chinese Provinces* (June 15, 2011), available at http://www.hrw.org/sites/default/files/reports/china0611WebInside_0_0.pdf (*hereinafter* Lead Poisoning Report).

4. *Right to legal capacity*
5. *Access to Justice*
6. *Concerns regarding China's draft Mental Health Disability Law*
7. *Exploitation of and violence against persons with disabilities and impunity for such abuses*
8. *Right to respect for physical and mental integrity*
9. *Right to live and be included in the community*
10. *Right to respect for the home and the family*
11. *Right to education*
12. *Right to health*
13. *Right to statistics and data collection, particularly with regard to natural disasters*
14. *China's fulfillment of its commitments to persons with disabilities under the National Human Rights Action Plan of China (2009-2010)*

1. Failure to provide access to information and services with respect to lead poisoning (Articles 9, 21, 25, and 26)

Article 25 of the CRPD requires that governments take measures to ensure that persons with disabilities are able to enjoy the highest attainable standard of health, including provision of access to health services, such as health services needed because of a person's disability, including early identification and intervention. The CRPD also requires governments to protect the right of persons with disabilities to seek, receive and impart information on an equal basis as the general public (Article 21) and to "organize, strengthen and extend" comprehensive habilitation and rehabilitation services in the area of health (Article 26). However, the Chinese government has failed to recognize and implement these obligations with respect to the widespread lead poisoning in China, which can lead to mental and physical disabilities.

The report by the Chinese government to the Committee states that "China gives priority to the development of community health services for the special needs of persons with

disabilities”.² The Law on the Protection of Persons with Disabilities requires the government to provide basic medical care to poor persons with disabilities.³ The State Council in China also requires the government to establish community-based healthcare institutions that are non-profit and focus on persons with disabilities.⁴ The report also states that “[t]he Chinese Government actively promotes information accessibility”,⁵ and the Law on the Protection of Persons with Disabilities requires the government to provide access to public information to persons with disabilities.⁶

In June 2011, Human Rights Watch documented lead poisoning in four Chinese provinces, caused by widespread industrial pollution that has contaminated water, soil, and air, and that is endangering the health of millions of people in China, including hundreds of thousands of children who are at risk of mental and physical disabilities as a result.⁷ The report indicates that the government has developed numerous environmental laws, regulations, and action plans designed to cut emissions and decrease pollution. However, the tension between these policies and the government’s goal for economic development, which is stated in the first guiding principle of the country’s Twelfth Five-year Plan for Environmental Protection (2011-2015), has resulted in weak enforcement and hazardous levels of pollution.⁸

According to our research, parents often did not learn that local factories were polluting at toxic levels until their children became ill. Parents were frequently given false or incomplete information, such as only children living within one kilometer of a factory were at risk of lead poisoning and that milk was adequate treatment of lead poisoning, indicating inadequate access to information.⁹ In addition, parents repeatedly reported that they were unable to access appropriate health care for their affected children.¹⁰ Parents of affected children told Human Rights Watch that government officials threatened them if they sought information about the lead poisoning or treatment for their children.¹¹ Human Rights Watch found that the government refused treatment of children with high lead levels and denied the scope and severity of the epidemic.¹²

In your upcoming pre-session review of China, Human Rights Watch urges the Committee to question the government of China about its steps to ensure that people exposed to lead poisoning or living in areas where they are at risk receive accurate and accessible information on contamination risk and available services.

² Initial Report Submitted by China to the Committee on the Rights of Persons with Disabilities, at 40, para. 101 (Aug. 30, 2010), available at <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Session7.aspx> (hereinafter China Report).

³ *Id.* at 40, para. 100.

⁴ *Id.* at 40, para. 101.

⁵ *Id.* at 33, para. 84.

⁶ *Id.* at 32, para. 81.

⁷ Lead Poisoning Report, at 1.

⁸ *Id.* at 2.

⁹ *Id.* at 2–3.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 2–3.

¹² *Id.* at 2.

We also urge the Committee to ask the government of China about their plans for testing and treatment all children at risk for lead poisoning, as well as their plans for providing education and employment opportunities that are accessible to persons with disabilities.

2. Derogatory language (Articles 1, 3, and 8)

Articles 1 and 3 of the CRPD provide that an important aspect of the purpose and principles of the CRPD is to promote respect for the inherent dignity of persons with disabilities. Article 8 of the CRPD further provides that states parties are obligated to adopt measures to raise awareness regarding and to foster respect for the rights and dignity of persons with disabilities throughout society.

The government's report states that the "[t]he basic principles laid down in articles 1 to 4 of the [CRPD] regarding protection of the rights of persons with disabilities are reflected in China's laws, administrative regulations, policy documents and national development plans."¹³ However, the Law of the People's Republic of China on the Protection of Persons with Disabilities states that "[a] person with disabilities refers to one who has abnormalities or loss of a certain organ or function, psychologically, physiologically, or in anatomical structure, and has lost wholly or in part the ability to perform an activity in the way considered normal."¹⁴ This language that describes people with disabilities as having "abnormalities" does not conform to the principles of the CRPD, including the respect for dignity. Individuals with disabilities are "normal" in many ways. The use of the word "abnormalities" is largely recognized as pejorative in the community of persons with disabilities.

In your upcoming pre-session review of China, Human Rights Watch urges the Committee to question the government of China about its plans to conform language regarding persons with disabilities in laws, policies and plans to reflect the principles of the CRPD and to generate respect for such persons throughout Chinese society.

3. Right to safety during situations of risk and humanitarian emergencies (Article 11)

Article 11 of the CRPD provides that states parties must take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters."

The Chinese government's report to the Committee discusses the special support provided by the government to persons with disabilities following the 2008 Wenchuan earthquake,¹⁵ however, the report does not include any statistics or other research data on how persons with disabilities fared in the earthquake or since that time or how many

¹³ China Report, at 7, para. 4.

¹⁴ *Id.*, at 6, para. 1.

¹⁵ *Id.*, at 19, para. 49.

disabilities were caused or exacerbated by it. Furthermore, no data has been provided on how many people with disabilities, particularly children, have been impacted by other natural disasters in China. More broadly, the report makes no mention of any disability-inclusive disaster plans or emergency strategies.

Human Rights Watch urges the Committee to question the government of China regarding efforts to obtain statistical and other relevant information regarding persons with disabilities and the Wenchuan earthquake, and to make such information accessible.

We also urge the Committee to question the government about its disaster plans and policies and whether they are adequately inclusive of persons with disabilities.

4. Right to legal capacity (Article 12)

Article 12 of the CRPD protects the legal capacity of persons with disabilities on an equal basis with others in all aspects of life, including by imposing upon governments the obligation to take affirmative measures to ensure that persons with disabilities are able to exercise such legal capacity.

China's Constitution provides that "all citizens of the People's Republic of China are equal before the law".¹⁶ In addition, the Law on the Protection of Persons with Disabilities in China provides that "persons with disabilities shall enjoy equal rights with other citizens in political, economic, cultural and social respects and in family life as well"; that "the rights and dignity of persons with disabilities as citizens shall be protected by law"; and that "insult of and disservice to persons with disabilities shall be prohibited".¹⁷ The Chinese government's report provides that "[n]one of China's various laws exclude the capacity of such persons as subjects of the law."¹⁸

The report also vaguely asserts that "[i]n April 2008, China amended the Law on the Protection of Persons with Disabilities, ... giving prominence to the concept of 'safeguarding the legitimate rights and interests of persons with disabilities'". Further, the report states that "[i]n actual civil activities, persons with disabilities who require aid may engage in civil legal actions through a proxy. For example, in accordance with the relevant provisions of the Civil Procedure Law, a person with disabilities may appoint a proxy to represent him in civil litigation. The General Principles of the Civil Law provides that *mental patients with no or limited capacity to undertake civil actions may appoint as a guardian* their spouse, parents, adult children or other close relatives, as well as other relatives and friends who have close connections with the patient and who have been approved by a residents' or villagers' committee."¹⁹

These excerpts from the government's report to the Committee raise serious concerns regarding China's protection of the right to legal capacity of persons with disabilities.

¹⁶ China Report, at 10, para. 23.

¹⁷ *Id.*

¹⁸ *Id.*, at 20, para. 50.

¹⁹ *Id.*, at 20, para. 52.

Further concerns about the right to legal capacity as related to the right to liberty and right to be free from exploitation are discussed in sections 6 and 7, respectively, below.

In your upcoming pre-sessional review of China, Human Rights Watch urges the Committee to ask the government of China about what is meant by the concept “safeguarding the legitimate rights and interests of persons with disabilities” now included in the Law on the Protection of Persons with Disabilities. In addition, we urge the Committee to question the government about how such safeguards ensure the rights and prohibit the discrimination of persons with disabilities.

We also urge the Committee to question the Chinese government about the guardianship law for persons with mental disabilities “with no or limited capacity”, including specifically how such guardians are appointed and what the review procedures are.

5. Access to Justice (Article 13)

Article 13 of the CRPD obligates states parties to ensure effective access to justice for all persons with disabilities on an equal basis as others, including procedural accommodations during all stages of all legal proceedings and training of those working in the field of administration of justice.

The Chinese government’s report to the Committee states that “[m]any other laws require that reasonable accommodation be provided to persons with disabilities. For example, the Criminal Procedure Law stipulates: ‘During the interrogation of a criminal suspect who is deaf or mute, an officer who has a good command of sign language shall participate, and such circumstances shall be noted in the record’; ‘if the defendant is blind, deaf or mute, or if he is a minor, and thus has not entrusted anyone to be his defender, the People’s Court shall designate a lawyer that is obligated to provide legal aid to serve as a defender.’”²⁰

Further, the report states that “[t]he Criminal Procedural Law provides that when the defendant is a blind, deaf or dumb person or a minor, who has not appointed a lawyer, the People’s Courts must designate legal aid lawyers to serve as their defense lawyers. The Law on the Protection of Persons with Disabilities stipulates that for persons with disabilities who need legal aid or judicial assistance because of financial difficulties or other reasons, the local legal aid institutions or People’s Courts must give help and provide legal aid or judicial assistance to such persons in accordance with the law. Organizations of persons with disabilities should give support to persons with disabilities when they seek to safeguard their legitimate rights and interests through litigation.”²¹

In your upcoming pre-sessional review of China, Human Rights Watch urges the Committee to ask the government of China about what specific support and accommodations are provided to persons with disabilities in the justice system.

²⁰ China Report, at 11, para. 25.

²¹ *Id.* at 21, para. 55.

We also urge the Committee to question the government about what specific protections and accommodations are provided to persons with intellectual or psychosocial disabilities, who are criminal suspects subject to interrogation and other legal processes.

6. Concerns regarding China's draft Mental Health Disability Law (Articles 12, 14, 17, 18, and 19)

The CRPD requires governments to ensure that persons with disabilities enjoy legal capacity in all aspects of life (Article 12), actively protect the right of persons with disabilities to liberty and security of person (Article 14), respect the right of persons with disabilities to physical and mental integrity (Article 17), ensure that all persons with disabilities enjoy the right to liberty of movement, including to choose where they reside (Article 18), and to take measures to assist persons with disabilities to enjoy the right to live independently in the community (Article 19).

The General Principles of the Civil Law in China provides that “a citizen shall have the capacity for civil rights from birth to death”²² and the Chinese government’s report provides that “[n]one of China’s various laws exclude the capacity of [persons with disabilities] as subjects of the law”.²³ China’s Constitution provides that citizens’ liberty of person shall not be violated,²⁴ and the Chinese government’s report states that “[t]he liberty and security of person of citizens, including persons with disabilities, are equally protected under Chinese law” and that the “[t]he Chinese government respects the physical and mental integrity of persons with disabilities”.²⁵ Finally, the Law on the Protection of Persons with Disabilities provides that persons with disabilities enjoy equal rights to other citizens in respect of home life,²⁶ and the Services System for Persons with Disabilities requires “the development of community services for persons with disabilities, and of home help services . . . and reliance on the community to provide life care, rehabilitation and follow-up care . . . ; promotion of the construction of and conversion to barrier-free facilities in communities, on roads, in public buildings and in residential buildings”.²⁷

At present, there are no guidelines under Chinese law governing involuntary civil commitment, which has led to the compulsory commitment of persons merely because they are suspected of having a mental disability.²⁸ In addition, the consent of family members is often sufficient consent to commit someone. Human Rights Watch urges the adoption of a strong law that provides the full protections of the rights of persons with disabilities, as articulated in the CRPD. The revised draft Mental Health Disability Law

²² China Report, at 20, para. 51.

²³ *Id.* at 20, para. 50.

²⁴ *Id.* at 22, para. 58.

²⁵ *Id.* at 23, para. 59.

²⁶ *Id.* at 29, para. 75.

²⁷ *Id.*

²⁸ Yu-Tao Xiang, *et. al.*, “China’s National Mental Health Law: a 26-year work in progress”, www.thelancet.com, vol. 379 (Mar. 3, 2012).

that was released on October 29, 2011²⁹ does make some progress on the current state of the law in this area, but does not go far enough to ensure the full and adequate promotion and protection of the rights of persons with mental disabilities.

The revised draft of China's Mental Health Disability Law contains numerous provisions that provide for involuntary commitment, which constitutes a deprivation of liberty in violation of the CRPD. Specifically, the draft Law would permit the indefinite involuntary detention, forced medication, and forced labor of persons "suspected of having a mental disability", and would provide that "suspected mental disability sufferers" who have committed crimes are subject to mandatory medical treatment.³⁰ The draft Law would also provide that a person can be involuntarily detained and treated if they are "going to harm themselves" or if they endanger the personal safety of others, based on the opinion of psychiatrists.³¹ In addition, guardians, close relatives, and local administrative officials would be able to send "suspected mental disability sufferers" for evaluation under the draft Law.³² These provisions are ripe for abuse. Moreover, the draft Law does not contain a clear judicial review process by which to appeal such involuntary detention.

The government's report states that the draft Mental Health Law will "prohibit the trial on patients suffering from mental conditions of new medicines and treatment methods that have no relation to the treatment of their condition." However, the revised draft of China's Mental Health Disability Law would permit the use of purported treatments that raise serious human rights concerns. For instance, the draft Law would permit "experimental clinical medical treatments related to the treatment of mental disability",³³ as well as permit the use of restraints and solitary confinement in broad circumstances, including "when the patient has disturbed the orderly activity of medical treatment".³⁴ The draft Law would also allow institutions to compel people with mental disabilities to "undertake productive labor" as medical treatment.³⁵ Not only does the draft Law permit questionable acts and forced labor to be used as "treatment" of persons with mental disabilities, it also fails to protect the right of a patient to free and informed consent to such treatments.

Human Rights Watch urges the Committee to question the government of China about its progress toward the formal passage of the draft Mental Health Disability Law into law.

We also urge the Committee to ask the government of China about what steps it plans to take in order to ensure that the Mental Health Disability Law fully conforms to the standards and obligations under the CRPD.

²⁹ China State Council Legislative Affairs Office, draft Mental Health Disability Law, released Oct. 29, 2011.

³⁰ *Id.* at arts. 24, 27, and 38.

³¹ *Id.* at art. 27.

³² *Id.* at art. 24.

³³ *Id.* at art. 39.

³⁴ *Id.* at art. 37.

³⁵ *Id.* at art.38.

7. Exploitation of and violence against persons with disabilities and impunity for such abuses (Articles 12, 13 and 16)

The CRPD requires that governments take active measures to protect persons with disabilities from exploitation, violence, and abuse (Article 16), provides that governments must take affirmative steps to ensure that persons with disabilities are able to obtain effective access to justice (Article 13), and protects the legal capacity of persons with disabilities (Article 12). However, numerous media reports regarding the exploitation of persons with disabilities as slaves demonstrates that those in China who engage in such exploitation are able to do so because they believe there will be no consequences therefor, and often there have not been.³⁶

The Chinese government's report to the Committee provides that "China protects workers with disabilities from exploitation, violence and abuse."³⁷ The Law on the Protection of Persons with Disabilities in China specifically provides that violence, threats and methods involving the restriction of personal liberty are not permitted to coerce a person with disabilities to do labor.³⁸ Organizing or coercing persons with disabilities to engage in terrifying or cruel performances, as well as beating and harming persons with disabilities, is punishable under the Law on Public Security Administration in China.³⁹ Further, the Law on Employment Contracts provides that employers will be held liable for using violence or threats to coerce labor, among other things.⁴⁰

In addition, the report provides that "[t]he Law on the Protection of Persons with Disabilities stipulates that for persons with disabilities who need legal aid or judicial assistance because of financial difficulties or other reasons, the local legal aid institutions or People's Courts must give help and provide legal aid or judicial assistance to such persons in accordance with the law."⁴¹ Further, China's Constitution recognizes that all Chinese citizens are equal before the law⁴² and the Law on the Protection of Persons with

³⁶ See, e.g., Song Shengxia, "Sweatshop allegedly abuses mentally ill", The Global Times (Dec. 14, 2010); Barbara Demick, "China's disabled exploited as slaves; With more labor needed for grueling work at sites such as brick kilns, ruthless recruiters prey on the mentally impaired", The Los Angeles Times (Feb. 26, 2011); Raymond Li, "Web campaign mixes fact and fiction to end petitioner's 14 years in detention", SCMP (Jan. 13, 2011); Alice Yan, "Locked up in an asylum - even if you're sane; The word of just one psychiatrist can confine a person to a mental hospital on the mainland; a new law may do little to stop forced committals", SCMP (May 16, 2011); Chinese Human Rights Defenders, "Couple get terms for enslaving disabled", www.chrdnet.org (May 1, 2011); An Baijie, "Rescuers struggle to ID disabled kiln slaves", China Daily (Sept. 7, 2011); Liu Xiangrui, "Brick kilns enslaving disabled workers", China Daily (Sept. 6, 2011).

³⁷ China Report, at 26, para. 67.

³⁸ *Id.* at 27, para. 67.

³⁹ *Id.* at 26, para. 67.

⁴⁰ *Id.* at 26-27, para. 67.

⁴¹ *Id.* at 21, para. 55.

⁴² *Id.* at 20, para. 50.

Disabilities provides that “the rights and dignity of persons with disabilities as citizens shall be protected by law”.⁴³

However, the Chinese press has regularly reported on persons with disabilities working in abusive or exploitive conditions such that further action must be taken by the Chinese government in order to ensure that, in accordance with the CRPD, abuse of persons with disabilities does not continue and that any such violations do not result in impunity. For example, in December 2010, the Global Times reported on the appalling conditions of employment of 11 workers, most of whom had mental disabilities, at a factory in Toksun County in the Xinjiang Uighur Autonomous Region.⁴⁴ These workers were confined to the factory, were fed the same food as the boss’s dogs, and were denied showers, protective uniforms and equipment, and even compensation.⁴⁵ Although the workers were eventually rescued, the Global Times reported that the local police had stated that they were unable to do anything about the poor conditions or lack of pay because the factory has a labor contract with the Sichuan Civil Affairs Department.⁴⁶

In another such case that has received media attention, 30-year old Liu Xiaoping, who has a mental disability, was rescued in early 2011 after being enslaved and forced to work in a brick factory for ten months.⁴⁷ Liu was found wearing the same clothes he had disappeared in ten months earlier, and with injuries all over his body from beatings and working without protective gear for months.⁴⁸ Liu first went to the rural factory believing that he would be well compensated in exchange for his labor.⁴⁹ The Los Angeles Times reported in February 2011 that no one had been arrested in connection with the crimes against Liu and that Liu’s family had not received any compensation for Liu’s medical expenses.⁵⁰ Similar stories can periodically be found in the Chinese press.

The director of Enable Disability Studies Institute, Zhang Wei, has spoken out about the numerous cases in which persons with disabilities are enslaved and forced to work in abusive conditions.⁵¹ Zhang has explained that impunity is often the result in such forced labor cases because law enforcement repeatedly refuses to use its resources and effort to search for persons with mental disabilities when they are reported to have disappeared.⁵² If such victims are rescued, according to Zhang, their testimony is often not taken

⁴³ *Id.*

⁴⁴ Song Shengxia, “Sweatshop allegedly abuses mentally ill”, The Global Times (Dec. 14, 2010).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Barbara Demick, “China’s disabled exploited as slaves; With more labor needed for grueling work at sites such as brick kilns, ruthless recruiters prey on the mentally impaired”, The Los Angeles Times (Feb. 26, 2011).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

seriously because of their disabilities.⁵³ Many family members of disappeared persons with disabilities have reported that their pleas to law enforcement are ignored.⁵⁴

In your upcoming pre-sessional review of China, Human Rights Watch urges the Committee to question the government of China about ongoing efforts to address the reported cases of enslavement and forced labor of persons with disabilities.

We also urge the Committee to ask the government of China about what steps it plans to take to ensure that the perpetrators of these crimes are held to account.

8. Right to respect for physical and mental integrity (Articles 15 and 17)

Article 17 of the CRPD obligates governments to recognize the right of persons with disabilities to respect for his or her physical and mental integrity on an equal basis with others. More specifically, the CRPD protects persons with disabilities from being subjected to torture or to cruel, inhuman or degrading treatment or punishment, and specifically “no one shall be subjected without his or her free consent to medical or scientific experimentation” (Article 15). However, some of the practices and procedures outlined in the Chinese government’s report to the Committee give rise to concerns regarding China’s compliance with these standards and obligations.

The Chinese government’s report to the Committee states that “China’s prisons give full consideration to the physiological and psychological characteristics and physical strength of persons with disabilities, providing corresponding care in such aspects as management, reformation, life and work. Firstly, they provide basic medical care services to prisoners with disabilities, giving them regular body checks,... Secondly, they have launched psychological correction and cure programmes and psychological guidance, for the purpose of correcting and curing prisoners with disabilities who show bad psychological tendencies.”⁵⁵

The report also states that “[i]n regard to medical care, China’s Law on Medical Practitioners provides that medical practitioners shall introduce the situation of the patient’s condition to the patient or their family strictly in accordance with the facts, but shall take care to avoid giving rise to undesirable consequences in the patient. The medical practitioner, when carrying out experimental clinical treatment, shall do so only having gained the approval of the hospital and the consent of the patient themselves, or of their family. Article 55 of the Tort Liability Law provides that: “During diagnosis and treatment, the medical staff shall explain the illness and relevant medical measures to their patients. If any operation, special examination or special treatment is needed, the medical staff shall explain the medical risks, alternate medical treatment plans and other information to the patient in a timely manner, and obtain the written consent of the patient; or, when it is not proper to explain the information to the patient, explain the

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ China Report, at 22, para. 60.

information to the close relative of the patient, and obtain the written consent of the close relative.⁵⁶

In your upcoming pre-sessional review of China, Human Rights Watch urges the Committee to ask the government of China what “regular body checks” of prisoners with disabilities consist of, what the “psychological correction and cure programmes” consist of, and what is meant by “prisoners with disabilities who show bad psychological tendencies”, and whether such practices are able to be consistent with the right of persons with disabilities to respect for physical and mental integrity.

We also urge the Committee to question the government about how such programs are implemented with respect to prisoners with disabilities, who implements them, and what safeguards and review procedures protect persons with disabilities subject to these invasive procedures.

Further, we urge the Committee to question the government about what “experimental clinical treatment” medical practitioners perform pursuant to the procedures of China’s Law on Medical Practitioners, and whether such practices are able to be consistent with the right of persons with disabilities to respect for physical and mental integrity and informed consent. Specifically, the sufficiency of family consent to treatment of persons with disabilities violates the CRPD on its face.

9. Right to live and be included in the community (Article 19)

Article 19 of the CRPD requires governments to recognize the right of persons with disabilities to live in the community on an equal basis with others, including their choices of where to live. This provision also requires governments to take active measures to ensure the full participation of persons with disabilities in the community, including by ensuring access to the support services necessary to realize this right. Statements in the Chinese government’s report to the Committee, however, suggest that the government is not complying with this provision.

For example, the government’s report states that “[t]here were 3,474 institutions offering fostering services for persons with disabilities, an increase of 2,418 on 2007, providing foster services to 110,000 persons with intellectual and psychiatric disabilities, as well as other persons with severe disabilities, an increase of 82,000 on 2007.”⁵⁷

Further, the government’s report states that “[t]he State Council’s Opinions on Promoting the Cause of Persons with Disabilities and Guiding Opinions on Accelerating the Promotion of the Social Security System and Services System for Persons with Disabilities require the following: the development of community services for persons with disabilities, and of home help services; where conditions are right, the establishment

⁵⁶ *Id.*, at 27, para. 70.

⁵⁷ *Id.*, at 9, para. 15.

of a home help services subsidy system, and reliance on the community to provide life care, rehabilitation, and follow-up care”⁵⁸

The Chinese government’s report states that “[i]n 1,727 municipalities and counties, prevention, cure and rehabilitation work in regard to psychiatric disorders was started, whilst in 807 areas and districts under municipal jurisdiction and 1,569 counties (cities), work on community rehabilitation was begun.”⁵⁹

In your upcoming pre-sessional review of China, Human Rights Watch urges the Committee to question the government of China about the increase in institutions and their plans to provide more community-based living choices for people with disabilities, in line with Article 19.

Further, we urge the Committee to question the government about what is meant by the phrase “where conditions are right” with respect to requirements of the Guiding Opinions to establish home help services. We also ask the Committee to inquire about the specifics with respect to implementation and monitoring of these requirements.

10. Right to respect for the home and the family (Article 23)

Article 23 of the CRPD requires states parties to take affirmative measures to protect the rights of persons with disabilities to autonomy with respect to their home and family relationships on an equal basis with others, including the protection against discrimination with respect to such matters.

The Chinese government’s report to the Committee provides that “Chinese law protects the right of all marriageable persons with disabilities to start a family.”⁶⁰ The report also states that “[t]he Chinese Government earnestly carries out the broad dissemination of reproductive health knowledge to persons with disabilities of reproductive age, and proactively dispatches to the homes of persons with disabilities information on reproductive health, contraceptive medicines and devices, and healthcare services during the pregnancy and perinatal periods.”⁶¹ Further, the report says that “[p]arents with disabilities, provided that they have not lost the capacity for guardianship as stipulated by the law, may, without discrimination, act as foster parents and guardians”,⁶² and that “the Chinese Government provides support and assistance to the parents and relatives of children with disabilities”.⁶³

In your upcoming pre-sessional review of China, Human Rights Watch urges the Committee to ask the government of China about the specifics of how it disseminates

⁵⁸ *Id.*, at 29, para. 75.

⁵⁹ *Id.*, at 8, para. 13.

⁶⁰ *Id.*, at 35, para. 88.

⁶¹ *Id.*, at 35, para. 89.

⁶² *Id.*, at 35, para. 90.

⁶³ *Id.*, at 36, para. 91.

reproductive health knowledge and other information related to health, contraceptives, and pregnancy to all persons with disabilities of reproductive age, as well as how the government ensures that families are able to obtain information about the support services that the government references.

We also urge the Committee to question the government about the criteria for parents with disabilities to lose “the capacity for guardianship”, and what safeguards are in place to ensure that laws on this issue do not violate the rights of persons with disabilities to respect for the home and family.

11. Right to education (Article 24)

Article 24 of the CRPD requires that governments ensure the right to an inclusive education of persons with disabilities, without discrimination, including the full development of potential, reasonable accommodations, and the development of skills that will enable persons with disabilities to participate effectively in a free society.

The Chinese government’s report to the Committee asserts that “[t]he Law on the Protection of Persons with Disabilities provides that regular primary schools and junior high schools must enroll children and young people with disabilities who are able to adapt to the study life in such schools”.⁶⁴ However this “able to adapt” standard appears to be inconsistent with the state’s obligation to provide reasonable accommodations.

The report also states that “China has actively developed special education schools. . . . with the aim of implementing compulsory education for children and young people of school age with visual disabilities, hearing and speech disabilities, and intellectual disabilities.”⁶⁵ The report also states that “[e]ducational institutions for the deaf use oral teaching methods supplemented with sign language and written language.”⁶⁶ The Chinese government singles out only certain disabilities with respect to its education programs; this section leaves out other disabilities and fails to discuss any comprehensive program.

In your upcoming pre-session review of China, Human Rights Watch urges the Committee to question the government of China about its education policies and practices, including what steps it plans to take to make all school facilities and curriculum more inclusive. Specifically, we ask you to question the government about what educational opportunities are available for children with disabilities other than those listed (for example, mental disabilities and autism).

We also urge the Committee to question the government about the reasonable accommodations that are offered in schools to persons with disabilities and what steps the government plans to take to bring its efforts in line with its obligations to provide reasonable accommodations under the CRPD. In particular, augmentative and

⁶⁴ China Report, at 38, para. 94.

⁶⁵ *Id.*, at 38, para. 95.

⁶⁶ *Id.*, at 39, para. 99.

alternative modes, means and formats of communication *should not be limited to sign language and Braille.*

12. Right to health (Article 25)

Article 25 of the CRPD provides that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination. The obligations of states parties with respect to this right include the provision of affordable health care services in all areas of the state. However, according to research studies, there remain outstanding health crises stemming from HIV infection due to the practices of blood-collection centers in the 1990s that constituted violations of the right to health of many persons in China.⁶⁷

Research documents that state-sponsored, for-profit blood-collection centers in China used unsafe practices in the 1990s that led to the spread of HIV to hundreds of thousands of people in Henan and other central provinces.⁶⁸ After HIV entered hospital blood supplies, it was spread further through hospital blood transfusions and grew to become the largest HIV blood disaster in recent history.⁶⁹ The disaster continued for years while many people acquired disabilities related to HIV infection, and local officials took steps to cover up the disaster.⁷⁰

In your upcoming pre-session review of China, Human Rights Watch urges the Committee to question the government of China about what actions it has taken, and plans to take, to provide compensation to people who acquire disabilities as a result of HIV infection through plasma donation or blood transfusion.

We also urge the Committee to ask the government about what actions it has taken, and plans to take, to ensure that people who acquire disabilities as a result of HIV blood disasters have equal and appropriate access to health care.

13. Right to statistics and data collection, particularly with regard to natural disasters (Article 31)

Article 31 of the CRPD provides that governments must collect information, including statistical and research data, that aids the government in making informed policy decisions surrounding the implementation of the provisions of the CRPD. In addition, governments must make such information accessible to persons with disabilities and others.

⁶⁷ Human Rights Watch, *Locked Doors: The Human Rights of People Living with HIV/AIDS in China*, <http://www.hrw.org/reports/2003/09/02/locked-doors-0>, September 2003. Asia Catalyst, “China: Compensate HIV Blood Disaster Victims”, March 4, 2012.

⁶⁸ Asia Catalyst, “China: Compensate HIV Blood Disaster Victims”, March 4, 2012.

⁶⁹ *Id.*

⁷⁰ *Id.*

Pursuant to the Law on the Protection of Persons with Disabilities, China is required to establish a statistical survey system of persons with disabilities.⁷¹ The Chinese government's report states that the government "carries out annual monitoring of the situation of persons with disabilities, in order to take stock of the population, geographical distribution of persons with disabilities, causes of disabilities, and the medical treatment, rehabilitation, education, employment, family situation and participation in society relating to persons with disabilities. All these provide evidence to serve as a basis for the formulation of policies and plans for the implementation of [the CRPD]"⁷².

The National Human Rights Action Plan of China (2009-2010) indicates that there are over 83 million people with various kinds of disabilities in China, which accounts for 6.34 percent of the total population.⁷³ However, the World Health Organization maintains that 15 percent of the population globally are persons with disabilities.⁷⁴

The Chinese government's report to the Committee makes claims about the number of urban persons with disabilities and rural persons with disabilities receiving minimum subsistence allowances pursuant to social security,⁷⁵ however there are no statistics regarding how many persons with disabilities in each area are not receiving such allowances, or what these statistics mean in terms of the percentage of those who should receive such allowances. The report also presents raw numbers of children attending special education schools without any full explanation of what these numbers mean.⁷⁶

Further, in its report, the Chinese government makes vague statements regarding its active efforts to build "an environment in which persons with disabilities can participate equally in the life of society",⁷⁷ as well as regarding the universal acceptance by society of preferential policies providing for reasonable accommodations,⁷⁸ without referencing any research or statistics to back up such assertions. In particular, the report states that "[t]he Chinese Government fully protects the various rights of children with disabilities",⁷⁹ without citing any authority to explain what in practice this claim relates to.

Human Rights Watch urges the Committee to question the government of China regarding its efforts to obtain adequate statistical and other relevant information regarding persons with disabilities in line with its obligations under the CRPD, and to make such information accessible.

⁷¹ China Report, at 52, para. 143.

⁷² *Id.* at 53, para. 144.

⁷³ National Human Rights Action Plan of China (2009-2010), *available at* http://www.china.org.cn/archive/2009-04/13/content_17595407.htm.

⁷⁴ World Health Organization, Fact Sheet No. 352 (June 2011), *available at* <http://www.who.int>.

⁷⁵ China Report, at 8, para. 11.

⁷⁶ *Id.*, at 8, para. 14.

⁷⁷ *Id.*, at 10, para. 21.

⁷⁸ *Id.*, at 10, para. 22.

⁷⁹ *Id.*, at 13, para. 32.

We also urge the Committee to further explain the statistics presented in its report to the Committee, such as what the numbers stated mean for the population of persons with disabilities as a whole.

14. China's fulfillment of its commitments to persons with disabilities under the National Human Rights Action Plan of China (2009-2010)

In April 2009, the State Council in China approved and published the National Human Rights Action Plan of China (2009-2010) (NHRAP), which seeks to advance human rights comprehensively and includes a section on the rights of people with disabilities.⁸⁰ This section commits the government in China to “[improve] the legal system to promote the development of undertakings for the disabled and to guarantee their legal rights”, “[promote] disability prevention, rehabilitation and other services”, “[promote] the construction of a barrier-free environment”, “[guarantee] disabled people’s right to education”, “[guarantee] the disabled people’s right to employment”, “[enhance] support for poverty-stricken disabled people in rural areas”, and “[guarantee] the cultural and sports rights of the disabled.”⁸¹

The Chinese government’s Assessment Report on the NHRAP indicates that “the social security and service systems for people with disabilities has been further strengthened.”⁸² The Assessment Report points to several legislative efforts in progress in China, such as the draft the Mental Health Disability Law, the Regulations on the Construction of a Barrier-free Environment, and the National Standards for Classifying and Grading Disabilities to show advances in the area of disability rights.⁸³ The Assessment Report states that the government has enhanced support for poor people with disabilities through the issuance of the Notice on Giving Priority to the Resolution of the Housing Difficulties of Low-income Families with One or More Disabled Members in Urban and Rural Areas.⁸⁴ In addition, the report notes that China has launched such initiatives as the National Special Olympics Day, demonstration fitness projects for persons with disabilities, and China’s First Arts Festival for Disabled Children.⁸⁵

The Assessment Report touches on many important rights issues while omitting some very notable ones. Its style is hortatory—asserting accomplishments and admitting some difficulties—but opaque. On most issues, the document lacks benchmarks or the kind of detail that would allow for meaningful assessment of progress.

The Chinese government’s report to the Committee states that “[t]he Outline of the Work for Persons with Disabilities during the Eleventh Five-Year Plan (2006-2010), integrating the principles of the Convention, stipulated concrete targets for such aspects as the

⁸⁰ National Human Rights Action Plan of China (2009-2010), *available at* http://www.china.org.cn/archive/2009-04/13/content_17595407.htm.

⁸¹ *Id.* at Sec. III(5).

⁸² Assessment Report on the National Human Rights Action Plan of China (2009-2010), at 28.

⁸³ *Id.*

⁸⁴ *Id.* at 29.

⁸⁵ *Id.*

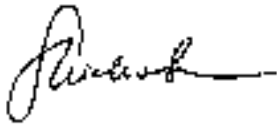
rehabilitation of persons with disabilities, education, employment, social security and barrier-free construction. It formulated 18 coordinated implementation plans. At present, these implementation plans have been progressing smoothly, and the stipulated targets will be met or exceeded.”⁸⁶

Human Rights Watch urges the Committee to question the government of China about its progress toward the fulfillment of its commitments in the area of disability rights under the NHRAP and to press the government with specific questions about its claims in its Assessment Report. In particular, we urge the Committee to question the government with respect to the facts underlying its assertion that “the stipulated targets will be met or exceeded”, including which targets in particular the government is referencing and what the specific results were of the government’s efforts.


We also urge the Committee to ask the government to discuss the steps it plans to take to address those areas where progress still falls short of the government’s obligations to persons with disabilities.

We hope you will find the comments in this letter useful and would welcome an opportunity to discuss them further with you. Thank you for your attention to our concerns, and with best wishes for a productive session.

Sincerely,



Sophie Richardson
China Director
Asia Division



Shantha Rau Barriga
Disability Rights Researcher/Advocate

⁸⁶ China Report, at 7, para. 8.