

## HUMAN RIGHTS VS STATE INTERESTS IN CHINA: CASE STUDIES

JIEFEN LI<sup>1</sup>  
*Independent Scholar*

### 1. Introduction

China's human rights record has attracted widespread debate both inside and outside the People's Republic of China (PRC).<sup>2</sup> Although the concept of human rights is still hotly contested in western countries,<sup>3</sup> the dialogue is particularly vigorous with regard to the Chinese human rights regime.<sup>4</sup> Three schools of thought have emerged from the debate over the concept of human rights in China: universalism, cultural relativism and developmentalism.

Universalism completely denies the cultural implications underlying the concept of human rights, forgetting the fact that the United Nations' Universal Human Rights Regime (UHRR) is mainly 'a product of power and culture'.<sup>5</sup> When exploring China's historically rich discourse on human rights<sup>6</sup> and the humanistic and liberal aspects of Confucian values, proponents of this theory underestimate the strong impact of the same ideology and

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<sup>1</sup> Dr. Jiefen Li (jli@business.otago.ac.nz) is a researcher in the Asia Institute, Department of Management, University of Otago.

<sup>2</sup> See the Amnesty International website (<http://web.amnesty.org/web/library/>) for recent annual reports; see also reports issued by Human Rights Watch (HRW), Human Rights in China (HRIC) and the State Department of the United States.

<sup>3</sup> Wm. Theodore De Bary and Tu Weiming (eds), *Confucianism and Human Rights* (New York: Columbia University Press, 1998), pp. 24–5; Marina Svensson, *Debating Human Rights in China: A Conceptual and Political History* (Lanham, Maryland: Rowman & Littlefield Publishers, 2002), p. 21.

<sup>4</sup> Paul Close and David Askew, *Asia Pacific and Human Rights: A Global Political Economy Perspective* (Hants, England: Ashgate, 2004), pp. 8–9. Also see Jack Donnelly (who explains the UHRR concept in detail), *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2nd ed., 2003), p. 22.

<sup>5</sup> Close and Askew, 2004, p. 10.

<sup>6</sup> Stephen Angle and Marina Svensson (eds), *The Chinese Human Rights Reader: Documents and Commentary 1900–2000* (Armonk, New York: M. E. Sharpe, 2001), xvii.

tradition, which places a high value on respect for authority, order and stability under an authoritarian regime in modern China.<sup>7</sup>

The cultural relativism position admits the importance of national culture to human rights,<sup>8</sup> and this has been highlighted in the context of the much-debated Asian values.<sup>9</sup> However, cultural or political difference will not justify abuses of human rights; nor is there necessarily a connection between China's history and culture, and the poor record of human rights in modern times. Those who argue this position also fail to identify what cultural elements, positive or negative, have impacted on the current human rights concept, or what else, beyond cultural argument, has contributed to the current human rights situation.

Developmentalism has correctly acknowledged the connection between China's development model, which is to maintain both economic growth and stability, and the flaws in human rights protection.<sup>10</sup> It is indeed the case that priority under this model is given to 'the strengthening of state authority, central control, and social discipline, rather than to the development of democratic institutions'.<sup>11</sup> However, this argument ignores the entrenched legal and cultural tradition of placing a high value on social order, harmony and authority. This tradition has perfectly matched the socialist ideology and party's own interests as evidenced by a similar emphasis on the elevation of state, public and social interests above individual and private concerns.

However, all three arguments ignore the evolution of the official discourse on human rights throughout the reform era,<sup>12</sup> in the course of

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<sup>7</sup> See Angle and Svensson, 2001, for a rich historical documentary collection of the development of human rights discourse, and Svensson, 2002; Wm. Theodore De Bary, *Asian Values and Human Rights: A Confucian Communitarian Perspective* (Cambridge, Mass.: Harvard University Press, 1998); Michael Davis (ed.), *Human Rights and Chinese Values: Legal, Philosophical, and Political Perspectives* (Oxford, New York: Oxford University Press, 1995); De Bary and Tu, 1998.

<sup>8</sup> Stephen Angle, *Human Rights and Chinese Thought: A Cross-Cultural Inquiry* (Cambridge: Cambridge University Press, 2002); Daniel Bell, *East Meets West: Human Rights and Democracy in East Asia* (Princeton, New Jersey: Princeton University Press, 2000); Kenneth Christie and Denny Roy, *The Politics of Human Rights in East Asia* (London: Pluto Press, 2001); Close and Askew, 2004.

<sup>9</sup> Asian values argue that liberal democracy and individual-based human rights are inappropriate to the political and social culture based on emphasising 'order, consensus and harmony over confrontation and adversarial forms of politics' in Asia. See Christie and Roy, 2001, p. 2; and Bell, 2000, p. 7.

<sup>10</sup> Christie and Roy, 2001, p. 6.

<sup>11</sup> De Bary, 1998, p. 3.

<sup>12</sup> Dingding Chen, 'Transformation from within: Explaining China's changing discourse on human rights, 1978–present', University of Chicago workshop held on 18 May 2004, available at <http://humanrights.uchicago.edu/workshoppapers/DingdingChen.pdf>.

building party legitimacy and a market economy. According to official documents and announcements,<sup>13</sup> the concept of human rights in the PRC covers three elements, showing a strong combination of cultural relativism and developmentalism when following UHRR: (1) human rights for Chinese people are primarily social and economic rights rather than civil and political rights, and the right to subsistence is the most basic right; (2) China is still a developing country, so development, stability and national independence are the most important rights; China should implement UHRR according to its specific cultural, historical and political conditions; and (3) the issue of human rights is a domestic one concerning sovereignty, and other countries should not interfere in this area.

Thus China's official discourse is to use people's social, economic and educational rights for human rights, and ownership rights for property rights. In 2004, China revised its Constitution, for the first time providing that the state respect and protect human rights and property rights, which have always been regarded as aspects of western liberal discourse. At the same time, the Chinese government continues administrative and judicial reforms, as well as engaging the international community on human rights and rule of law issues. The government announced in 2006 that it plans to amend its Criminal, Civil and Administrative Procedure Laws and reform the judiciary to prepare for ratification of the International Covenant on Civil and Political Rights. The new leadership under President Hu Jintao declared a plan to build a socialist and harmonious society based on fairness and justice by enforcing the rule of law.<sup>14</sup> In November 2006, China held a ten-day exhibition for its human rights achievements, presenting 'more confidence in China's commitment to human rights as it builds a socialist harmonious society'.<sup>15</sup>

The evolution of the official discourse on human rights is an ideological adaptation based on the emerging plural interests of the market economy in contemporary China, and a compromise for the purposes of maintaining party legitimacy. Since the Chinese Communist Party (CCP) wants to establish its legitimacy based on economic growth and the rule of law, it is in the interests of the CCP, and a need from within the party, that

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<sup>13</sup> For example, White Paper issued by the Information Office of the State Council of China, *China's Progress in Human Rights in 2004*, 13 April 2005, available from various sites as in [China.org.cn/o4/13/2005](http://China.org.cn/o4/13/2005).

<sup>14</sup> Hu mentioned this idea early on 19 February 2006 at the CCP members' training sessions and it was subsequently released by *Xinhua News Agency* on 26 June. The Party Sixth Session of the Sixteenth Congress formally passed this doctrine on 11 October 2006.

<sup>15</sup> Cai Wu, director of the Information Office of the State Council, quoted in *Reuters*, 'China comes to defend its human rights record', 17 November 2006, available at [http://today.reuters.com/news/articlenews.aspx?type=topNews&storyid=2006-11-17T161446Z\\_01\\_PEK131635\\_RTRUKOC\\_0\\_US-RIGHTS-CHINA.xml&src=rss](http://today.reuters.com/news/articlenews.aspx?type=topNews&storyid=2006-11-17T161446Z_01_PEK131635_RTRUKOC_0_US-RIGHTS-CHINA.xml&src=rss).

the process of legitimisation safeguards human rights, regardless of international pressure. While many human rights abuses take place under the party–state interests of maintaining economic development and party legitimacy, the local states have frequently broken central policies and national laws in the process of decentralisation of economic and administrative affairs. Thus, in addition to the conflict between the party–state and individual–private interests, there is the conflict of interests between the central state and local governments regarding control. In terms of strengthening the party–state’s control, it can be argued that keeping in line with the international human rights standards and protecting human rights will benefit a new leadership that is confronted with various problems, such as great social disparity, environmental degradation, ever-increasing social unrest and widespread corruption.

However, the development of human rights in China has been restricted by traditional socialist emphases on social stability and state and public interests; the official concept of human rights, which stresses more sustainable socio-economic rights over civil and political rights; and the maintenance of one-party rule. It is clear that China wants to safeguard human rights on the condition it first satisfies all of its primary interests and concerns.

This article investigates human rights practices and those elements which contributed to widespread human rights infringement in contemporary China, e.g. the relationship between party–state interests or public interests and individual or private interests, and between the interests of the central state and local states. Furthermore, it will deal with the dilemma of the current record of human rights protection, and the regime’s commitment to the UHRR when it is struggling with other social problems that inevitably influence the development of human rights in China. Following a case review of the position of individual interests versus state interests in China, this article will focus on arbitrary administrative detentions, such as forceful seizure and custody of individuals; detention of citizens—especially those involved in political, religious and civil rights activities disapproved of by the state—and the use of torture for extracting confessions; and the limits of remedies for victims of the state. All these abuses are carried out by local states in the course of administering justice within their jurisdictions. These jurisdictions have become increasingly powerful and arbitrary compared with the central state under the dominant ideological and political concern for social stability and party legitimacy.

## 2. The Conflict between Individual Rights and State Interests

One day in July 1999, Yao Li was having lunch with her two female colleagues when an armed robbery took place at the Daqing branch of the Construction Bank, where she worked as a teller. She pressed the alarm button, but the alarm was not in working order. She tried to call the police while pretending to look for the key to the cash box, but the telephone was also out of order. The robbers took 13,568.46 *yuan* from Yao's cash box and 30,190 *yuan* from other boxes. When the robbers asked Yao to open the safe, she lied to them, saying that there was no money inside. In fact, there was 250,000 *yuan* in the safe. The robbers believed her and ran away. Yao immediately reported the robbery to the police. The next morning, she repaid the money taken from her cash box from her own savings.

However, the bank dismissed her from her post and cancelled her party membership on the grounds that she had failed to do enough to protect state interests, although neither the alarm system nor the telephone line to the police proved to be in working order. It was implied that Yao should have stood up and fought the robbers, even at the risk of her own life. Yao applied unsuccessfully for administrative redress. She then applied for labour arbitration and won the case. The bank was ordered to repeal its decision.

The bank disagreed with the arbitration settlement and brought the case to court, but the court supported the arbitration commission. However, in January 2000, the bank defied both the arbitration and litigation, and refused to withdraw its decision, insisting that Yao was a coward, and that 'there was no failure whatsoever in the alarm system at the bank when the robbery happened, that Yao gave in to the robbers by allowing them to take away the money when her life was not under threat, and it was not Yao who prevented the safe from being opened by the robbers'.<sup>16</sup>

This case is only one example of conflict between individual rights and the public or state interest. Throughout most of Chinese history, ordinary people have been required to sacrifice their own rights and interests for the sake of the collectivistic interest. This trend continues in the PRC. In socialist China, the rights of citizens are always linked with their duty to the state on the grounds that no rights exist in isolation from duties. It has long been taken for granted by the Chinese government that citizens should sacrifice their own rights or even their lives for the state when a conflict emerges between individual and state interests. Article 33 of the Constitution states that citizens enjoy some basic rights and freedoms but it does not define them or provide specific articles to enforce them. This constitutional

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<sup>16</sup> Zhu Tong and Qi Shuxin, 'Ta shi gouxiang ma?' (Is she a dog-bear [coward]?), *Zhongguo qingnian bao*, 20 March 2000, p. 3.

right is that of citizenship, which may be restricted or even taken back by the state whenever it feels necessary to maintain social order. 'All of these have the potential to be used to restrict individual freedom.'<sup>17</sup>

In a society based on the rule of law, the sacrifice of individual rights is more a moral requirement than a legal one. Although the court, in deciding in favour of Yao, followed a current trend to protect personal rights, this confusion of law with morality will not be clarified in the foreseeable future in China.

### **3. Arbitrary Administrative Detention without Judicial Procedures**

The belief that individual rights are subordinate to the state's need to maintain the social order and protect the interests of the public will inevitably give rise to a situation in which legal procedures are ignored and individual rights infringed by law enforcement agencies in the name of maintenance of the social order and interests of the state. The same emphasis on development, stability and party legitimacy have also justified the suppression of political, civil and religious activities and those which are disapproved of ideologically. The party-state enjoys the power to define what state, public and socialist interests are, and what they are not. Under this guise, the local state and its agents often bypass or even breach the law, causing widespread and institutional infringements of human rights. Government agencies, such as the public security bureau (PSB, or the police), often ignore people's rights while performing their public functions. In practice, the over-emphasis on instrumental facets of the law has led to the neglect of many fundamental individual rights.

The Constitution and national laws have given the PSB great power to restrict and take away individual freedoms. The PSB performs both administrative functions, when managing the social order, and judicial functions, when investigating crimes. However, it is not clear which function the PSB is performing at any given time and it is up to the PSB to decide whether the case is an administrative or a judicial matter. According to the Criminal Procedural Law (CPL) and the 'regulation of administration and punishment concerning social security' (RAPSS), the police are authorised to maintain social order through criminal detentions and arrests; they are also empowered to use administrative coercive means to detain or shelter a person, or sentence a person to labour camp, without judicial procedures.

The following discussion will focus on the so-called 'virgin committing prostitution'; 're-education through labour'; and the regime's

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<sup>17</sup> June Teufel Dreyer, *China's Political System: Modernisation and Tradition* (London: Macmillan Press, 2000, 3rd ed.), p. 171.

ignorance of the social, economic, educational and civil rights of citizens. These themes are top priority in terms of China's human rights, because such practices are widespread throughout China's provinces: institutionally, due to the limitations of the legal and political systems; and ideologically, as a result of following party–state goals in maintaining stability, socialist morality and party legitimacy.

*(1) Cases of the so-called 'virgin committing prostitution'*

Since economic reforms began in the late 1970s, local states have become increasingly powerful in terms of both the economy and their discretion in the implementation of national policies and laws. Since the central state relies on the police more and more to maintain social stability and party legitimacy, and also relies on local economic performance, the PSB at local levels has become very powerful and abusive as well as increasingly money-oriented—which is widespread in society.

During the process of decentralisation, people across China strove to develop regional or departmental enterprises and to improve their lives. The police, like other government agencies, took this opportunity to exercise their influence and power in pursuit of economic benefits. A shortcut for them was to impose administrative fines on people. Police fines made the police individually and collectively wealthier. Some police even went so far as to make up cases to 'expand sources of income' (*chuangshou* 创收). A new type of business soon developed in China known as a 'law-enforcing economy' (*zhifa jingji* 执法经济); it became very common all over the country, as local autonomy strengthened during the times of reform.

Most of those held under administrative custody are poorly educated or privileged. They are not released until they pay the fines. The amount of the fine varies from person to person and from case to case; usually the police have the final say. Typical of this are cases generally known as 'virgin girls commit prostitution' (*chunii maiyin an* 处女卖淫案), because of the repeat occurrence in various regions and the widespread attention over recent years; the many common features of these cases; and the disparity between maintaining social stability and the interests of the agency.

Many such cases fail to come to light because of interference by law enforcement agencies and also because of the ordeal endured by the women.<sup>18</sup> These cases demonstrate how the emphasis on social stability and development at the same time empowered local PSB to abuse human rights for financial gain. These cases have much in common. The victim is usually

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<sup>18</sup> For more reports of such cases, see *Zhongguo xinwen wang*, 28 May 2002 and 23 December 2001 ([www.chinanews.com.cn](http://www.chinanews.com.cn)); *Renmin ribao*, 21 December 2001 ([www.peopledaily.com.cn](http://www.peopledaily.com.cn)); *Chutian dushi bao*, 4 August 2001, p. 1; *Zhonghua wang*, 2 December 2002 and 14 December 2001 ([www.china.com](http://www.china.com)).

a young woman. She is detained on suspicion of prostitution by the police, who torture and humiliate her until she admits being a prostitute and gives the names of her customers. They then release the woman and fine her so-called customers. Later medical checks show that the young woman is still a virgin, and the victim appeals to the press or local authorities for justice. Such cases are not taken seriously by the PSB until superior officials intervene.

One such case happened in Jingyang, Shaanxi, in January 2001.<sup>19</sup> At around 8 o'clock in the evening, Ma Dandan, a 19-year-old woman, was watching TV with some customers in a hairdressing salon owned by her sister when suddenly two men in plain clothes, who claimed to be police officers but produced no warrant of arrest or search, took Ma away by force to a van. Ma was detained in the Jianglu police substation, where the two police officers took turns to interrogate her for the whole night. They even hung Ma from a basketball post outside in the chilly winter wind, beating and kicking her until 4 o'clock the next morning. She was then taken back into a closed office to be 'ideologically educated' (*sixiang jiaoyu* 思想教育) for half an hour by the head of the police station. Ma was tortured physically and mentally, and almost lost consciousness. Finally, Ma signed a prepared confession and was released at 7 o'clock the following evening. A few days later, the Jingyang county PSB announced an administrative decision against Ma, in which Ma was described as a male who had been detained and punished for visiting prostitutes.

Ma applied to the county PSB for administrative redress. The bureau made the hospital staff examine Ma's hymen twice (which breached her privacy). The medical check proved that Ma was still a virgin. Under pressure from the press, the bureau reluctantly took disciplinary measures against two police officers, although the officers had violated criminal laws and should have been punished accordingly. The first trial of this case at the county court resulted in the defendant being ordered to pay Ma compensation of only 74.66 *yuan*, which amounted to her pay for two days' work. Upon further appeal, the compensation was increased to 9,135 *yuan* but at the same time her request for a public apology and rehabilitation were refused. The case was thus closed, but the harm done to Ma, body and soul, would likely remain with her for the rest of her life.

Of the known cases, quite a few 'virgin prostitutes' were tortured and forced into fabricating a list of their 'customers'. The men on the list were then tracked down, detained and heavily fined, or forced to run away from home and hide elsewhere for years without returning home for fear of being persecuted. What is worse, some of them were divorced by their wives and

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<sup>19</sup> *Hua shang bao*, 21 March 2001, p. 1; *Nanfang dushi bao*, 23 March 2001, A17.



even dismissed by their employers because of the unfounded charge of visiting prostitutes.

In November 1998, for example, in Baishui, Shaanxi, a 19-year-old woman confessed that she had had illicit sexual relationships with over fifty men, and named them at random. Most of the listed men were found to be non-existent, but the others on the list were detained, beaten and fined. After they were released, they took revenge for being wronged not on the police but on the victim's family. When the police later found the list to be fake, they took the woman back, detained her for much longer than stipulated in laws or regulations, and beat her again. She then narrowed the number down to sixteen. The police conducted a door-to-door search for these sixteen men. Some escaped and the remaining ones were detained, beaten and forced to pay heavy fines. Some were divorced by their wives. They then sought revenge against the young woman's family.

The police adopted a consistent approach towards these types of cases: (1) they assumed the women to be guilty in the first place; (2) they breached procedural justice by failing to follow legal procedures and by using torture; and (3) their tough actions against these young women were motivated more by economic interests than maintenance of social order. In these cases, the women were treated as criminals and deeply humiliated. Some of them were tortured physically and sexually attacked when detained by the police. They lost their freedom and their dignity, and were left with nothing to prove their innocence but their body. 'If a woman can only prove her innocence by presenting her naked form [i.e. her hymen], stripped of clothing and dignity, her redemption is even more shamed, a burden of shame borne by the whole population, including all men.'<sup>20</sup>

If a man is wrongly accused of visiting a prostitute, how can he prove his innocence without the evidence of a hymen? If a married woman is accused of prostitution, how can she prove her innocence since she is not a virgin? Many people are wronged and lose their cases because they cannot produce 'hard evidence' with which to convince the police. Under this system, anyone can be found guilty if unable to prove innocence in a convincing way, and no one can feel secure when the police can override the law and arbitrarily detain a person.

However, in these cases, when a PSB decision was challenged, the police defended themselves vigorously. For example, in March 2002 in Yancheng, Jiangsu, a young woman was forced to confess to prostitution and was sentenced to six months of re-education through labour. On her way to the labour camp, she threw a letter to her father, which said that she had been

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<sup>20</sup> Li Fang, 'Yisibugua de qingbai bu shi ren de qingbai: ping Henan "chunü maiyin an"' (When the innocence of a person's nakedness is not proof of their innocence), *Zhongguo qingnian bao*, 10 June 2002, p. 7.

tortured into making a false confession. When two lawyers retained by her father asked to meet her in the labour camp, their request was rejected by the camp guards on orders from the PSB.<sup>21</sup>

Later, the lawyers went to see a senior PSB official in charge of legal affairs, asking for the case to be reconsidered. The official refused, claiming, 'Firstly, our bureau is very serious about this case and has already called six meetings to study it; secondly, the fact of being a virgin does not prove that she did not perform prostitution. Could not she satisfy her clients by means of masturbation or oral sex? Thirdly, our cadres and police are of good character. Extracting confessions by torture is a high-tension wire [*gao ya xian* 高压线] for us, so they would not have taken this risk.' Finally, the lawyers and journalists who had investigated the case gave it up after receiving threatening telephone calls.<sup>22</sup>

Although efforts are occasionally made to rebuild public confidence in law enforcement, most are to no avail. One reason is that there are no clearly defined and strictly observed laws regarding the scope of the power of state agencies. In most cases, these agencies collaborate in the name of protecting the interests of the state, because individual rights are negligible.<sup>23</sup> Secondly, the police usually enjoy more power in Chinese legal practice than judges and procurators, and, once the police decide a suspect is guilty, it is very difficult to reverse their decision. Thirdly, there is almost no restriction or supervision of police powers. Finally, law-enforcement agencies are more often than not linked by common interests.

## (2) *Re-education through labour*

The pressure of an increasing crime rate during the reform period and the requirements of the regime in suppressing alien political and religious activities has justified state security agencies using direct and efficient means to maintain social order. For many years, 'shelter and investigation' (*shourong shencha* 收容审查, SI)<sup>24</sup> and 're-education through labour'

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> A recent event happened in Shenzhen on 29 November 2006 when local PSB paraded all prostitutes and their clients in the street, causing widespread criticism and interference from the centre for the infringement of human rights of those affected. See, for example, *Taiyang bao* (Sun news), 6 December 2006, retrieved from <http://news.wenxuecity.com>.

<sup>24</sup> Under this system, the PSB is authorised to detain people without charge for up to three months, merely on the suspicion that they may be involved in crimes such as prostitution and drugs. Since the 1980s, several hundred thousand people have been detained every year under this system. In 1991, the PSB reportedly stated that there were 930,000 such cases in 1989 and 902,000 in 1990. In some regions, 30 to 40 per cent of detainees were held beyond the permitted maximum period of three months. See Amnesty International,

(*laodong jiaoyang* 劳动教养 or in short *laojiao* 劳教, RETL) have made it convenient for the police to detain individuals without having to justify their detention through the judicial process and other supervision. The two types of administrative detention, which in practice have become a great abusive means for the police to arbitrarily restrict and take away people's freedom, are based on regulations made by the State Council and the Ministry of Public Security; but there have never been any laws in China to empower the PSB to restrict or remove people's freedom under the SI and RETL systems. The PSB is in conflict with the Constitution and legal system, only evidencing the compromises of the regime in protecting the rights of citizens and maintaining current social order.

In 1997, SI was incorporated into the revised CPL, which means its inclusion in the judicial process. In practice, however, the police frequently breach the laws and regulations with regard to detention and custody without accepting judicial supervision. As Amnesty International observed, 'the police [in China] still have the power to detain the same categories of people without charge and without judicial review', and 'the human rights violations which have characterised "shelter and investigation" may continue'.<sup>25</sup>

RETL is a form of administrative detention which is usually combined with SI in the sentencing of minor criminals to labour camps for a fixed period. Both measures are similar in terms of function and procedure, the only difference being that SI is unlawful detention while RETL is illegally forced labour. The PSB has the power to place suspected offenders in detention centres or labour camps without a court order. Under the RETL system, the term of forced labour in camps can last as long as four years.<sup>26</sup>

Amending the 1957 regulations, the State Council issued 'Guanyu laodong jiaoyang de buchong guiding' (The supplementary regulation on RETL) in 1979. In 1982, the Ministry of Public Security (MPS) issued 'Laodong jiaoyang shixing banfa' (The method of enforcement of RETL) and revised it in 1989. An enforcing method of the 1982 regulation was issued in 1992, entitled 'Laodong jiaoyang guanli gongzuo zhifa xize' (The enforcing particulars for managing RETL work). These three administrative regulations constitute guidance only in order for the PSB to carry out RETL work. This system, which started in 1957, has been used to detain minor criminals, political dissidents and members of officially unrecognised religious groups by circumventing the criminal process, judicial review and

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*China: Law Reform and Human Rights: Not Far Enough*, 28 February 1997 ([http://www.oneworld.org/amnesty/press/28feb\\_china.html](http://www.oneworld.org/amnesty/press/28feb_china.html)).

<sup>25</sup> Amnesty International, *China: Law Reform and Human Rights: Not Far Enough*, 28 February 1997 ([http://www.oneworld.org/amnesty/press/28feb\\_china.html](http://www.oneworld.org/amnesty/press/28feb_china.html)).

<sup>26</sup> *Zhonghua Renmin Gongheguo falü quanshu*, 1989, pp. 1574 and 1583; *Guowuyuan gongbao*, no. 26 (1992), p. 1055.

the procedural protections guaranteed by the Chinese Constitution and the 1997 CPL.

The official figures show that about 150,000 people are held in labour camps at any one time.<sup>27</sup> In Guangzhou alone, over 9,200 people were placed in labour camps in 1999.<sup>28</sup> According to official sources cited in a 2002 annual report by Amnesty International, some 260,000 people were detained through RETL in early 2001, a substantial increase on the number officially reported in 1998. The use of this form of arbitrary detention has increased, particularly against political dissidents (since 1989), Falun Gong practitioners (since 1999) and crimes committed during the annual ‘strike-hard’ (*yanda* 严打) campaigns.<sup>29</sup> According to 2003 government statistics, more than 260,000 persons were in RETL camps. Foreign experts estimated that more than 310,000 people were serving sentences in these camps in 2003. According to published reports of the Supreme People’s Procuratorate (SPP), the country’s 340 RETL facilities had a total capacity of about 300,000. In addition, the population of special administrative detention facilities for drug offenders and prostitutes grew rapidly following a campaign to crack down on drugs and prostitution. In 2004, these facilities held more than 350,000 offenders, nearly three times as many as in 2002. The government also confined some Falun Gong adherents, who had completed terms in RETL but whom the authorities decided to continue detaining, in special re-education centres in psychiatric hospitals, along with others including petitioners and labour activists.<sup>30</sup>

The United Nations Working Group on Arbitrary Detention concluded in 2004 that the Chinese government had made no significant progress in reforming the administrative detention system in order to guarantee judicial review and conform to international law. Although proposed reforms would offer some added procedural protections, they would still not provide an accused individual with the opportunity to dispute the alleged misconduct

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<sup>27</sup> *Zhongguo falü nianjian* (The law yearbook of China) (Beijing: Zhongguo falü nianjian chubanshe, 1989-2001).

<sup>28</sup> *Yangcheng wanbao*, 13 September 2000  
(<http://www.ycwb.com/history/96/2000/09/13/ycwb/zhxn/1.html>).

<sup>29</sup> China rarely declares the figures in these areas. But, according to some unofficial or overseas sources, since July 1999, when the CCP started to crack down on the Falun Gong, a total of 100,000 members have been sent to the labour camps, and over 600 have been tortured to death. See Falun Gong website, *Minghui wang* (<http://huiyuan.minghui.org/html/articles/2003/3/607.html>); and *Qingzhou wang* (<http://qingzhou.sytes.net/news/shownews.asp?newsid=6613>).

<sup>30</sup> Country Reports on Human Rights Practices — China (includes Tibet, Hong Kong and Macau), 2005, released by the Bureau of Democracy, Human Rights, and Labor, 8 March 2006, <http://www.state.gov/g/drl/rls/hrrpt/2005/61605.htm>.

and contest law enforcement accusations of guilt before an independent adjudicatory body.<sup>31</sup>

Not only is RETL incompatible with the Chinese Constitution, law (especially the legislative law and administrative penalties law) and international conventions on human rights, but also it does not comply with the official commitment to building the rule of law.<sup>32</sup> As an administrative penalty, detainees are sentenced to heavy labour in harsh conditions and deprived of freedom from six months to one, three or even four years. The infringement of personal freedom often exceeds that of criminal sentences.<sup>33</sup> There are no rules governing the procedures in carrying out RETL or the management of this system. An individual may be sentenced to years of hard labour without court trial or access to lawyers, and all this can be implemented behind closed doors by administrative agencies. The RETL Management Commission, comprising heads of the police, judicial, civil welfare and labour departments, is merely a title, but it entrusts the police to carry out both approval and enforcement of each RETL decision.

RETL is neither a criminal punishment nor a measure of education; rather, it is a grey area between criminal law and administrative regulation. Although defendants are legally entitled to challenge RETL decisions, and to appeal for a reduction in, or suspension of, their sentences, appeals are rarely successful. Many cases involving RETL are difficult to challenge under the current administrative law of redress and litigation. The PSB tends to assess the police according to the number of cases handled, and to issue rewards depending on how many cases have been brought to a close. This encourages the police to detain as many people as possible, since RETL cases do not go through the legal procedures required by formal arrest. As a result, many

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<sup>31</sup> United States Congressional-Executive Commission on China: *Annual Report*, 20 September 2006, available at <http://www.cecc.gov>.

<sup>32</sup> There has been much discussion regarding the legality of RETL. See Shen Fujun, 'Guanyu feichu laodong jiaoyang zhidu de sikao' (Reflections on abolishing RETL system), *Faxue*, no. 7 (1999), pp. 18–20; Lin Xiaochun, 'Laodong jiaoyang zhidu de gaige' (On reforming the RETL system), *Faxue yanjiu*, no. 5 (1997), pp. 114–17; Zhang Shaoyan, 'Lun laodong jiaoyang lifa de jiben xingshi' (On the basic situation of making laws regarding RETL), *Fazhi ribao*, 20 February 2001, p. 1; Liu Jian, 'Lun Zhongguo laodong jiaoyang zhidu yu guoji renquan gongyue de chongtu ji tiaozheng' (On conflicts of China's RETL system with international conventions for HRs, and adjustments of RETL), *Xiangtan daxue xuebao*, posted at *Kan Zhongguo*, 26 May 2003 (<http://www.secrechina.com/news/articles/3/5/26/43360.html>).

<sup>33</sup> See Liu Jian and Shen Fujun, *supra* note 32.

innocent people are detained under RETL, while at the same time some criminals are protected.<sup>34</sup>

Many legal scholars, including Ma Huide and Chen Xingliang, have advocated the abolition of RETL.<sup>35</sup> However, there are still some who regard it as an effective means of maintaining social stability during transition periods. They advocate strengthening rather than abolishing the system.<sup>36</sup> A third group proposes its reform and legalisation through legislative procedure, in order to transform it into something resembling the magistrates' court in England.<sup>37</sup> The future of the RETL system is still uncertain, but it arouses increasing concern both in China and abroad.

### *(3) Dealing with the ever-increasing social unrest*

Since the mid-1980s, there has been a widening gap in wealth between the rich and poor, east and west, and city and countryside. There were 87,000 protests, demonstrations and other 'public order disturbances' in 2005, compared with 74,000 in 2004, according to government figures.<sup>38</sup> In rural areas, forceful appropriation of farm land by local authorities for the development of village and town enterprises has left many landless, and their only solution is to look for work in big cities. Every year millions of peasants migrate to cities, which is contributing to the collapse of the policy, in effect since the 1950s, of restricting labour migration. To date, there remains a floating population of between 100 and 150 million economic

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<sup>34</sup> Tang Shimin, 'Qian tan Zhongguo laodong jiaoyang jinxing gaige de biyaoxing' (A brief discussion of the necessity of reforming China's RETL system), *Dongfang fazhi wang*, 21 September 2002 (<http://law.eastday.com/epublish/gb/paper10/1/class001000001/hwz582109.htm>).

<sup>35</sup> Song Lu'an, 'Laodong jiaoyang ying yu feichu' (RETL should be abolished), *Xingzheng faxue yanjiu*, no. 2 (1996), pp. 26–31; Zhao Bingzhi, 'Zhongguo xingfa xiugai ruogan wenti' (Some issues regarding the revision of China's criminal law), *Faxue yanjiu*, no. 5 (1996), pp. 6–54.

<sup>36</sup> Bi Xusen, 'Cong lishi kan laodong jiaoyang de shuxing' (A study of the nature of RETL from a historical perspective), *Zhongguo laodong jiaoyang*, no. 2 (1999); 'Laodong jiaoyang gongzuo zhi neng jiaqiang bu neng xuruo' (RETL can only be strengthened rather than weakened), *Fazhi ribao*, 3 August 1997, p. 1.

<sup>37</sup> Liu Renwen, 'Laodong jiaoyang zhidu jiqi gaige' (RETL system and its reform), *Jiancha ribao*, 4 May 2001; Chu Huizhi, 'Lun jiaoyang chuyu de helixing' (A discussion of the rationality of education through a magistrature), *Zhongguo laodong jiaoyang*, no. 3 (1999); 'Jinkuai wei laodong jiaoyang lifa' (The legalisation of re-education through labour must be put on the agenda), *Nanfang zhoumo*, 21 September 2000, p. 13; Wang Zhonghuan, 'Zhiding you Zhongguo tese de shourong jiaoyang fa tansuo' (An exploration on making a law concerning shelter and education with Chinese characteristics), *Shandong faxue*, no. 1 (1998), pp. 48–9.

<sup>38</sup> Various sources; for example, see *Xinhua Wang* (New China Net), 31 July 2005 at [http://news.xinhuanet.com/mrdx/2005-07/31/content\\_3290161.htm](http://news.xinhuanet.com/mrdx/2005-07/31/content_3290161.htm).

migrants, who lack official residence status in cities and have no access to social welfare, education or certain types of jobs.

Shelter and repatriation (*shourong qiansong* 收容遣送, SR) was for a long time used nationwide to deprive several million people a year of their freedom without any judicial process. SR was a civic welfare mechanism designed to provide aid for homeless people in urban areas, according to a regulation made by the State Council in 1982. Local civic agencies were required to set up shelters with government funds in order to provide basic living facilities for the homeless. The local police were responsible for sheltering and repatriating them. A document known as 'Document No. 48', and entitled 'A proposal for reforming shelter and repatriation work', was issued in 1991. It extended the SR system to cover 'three-withouts people' [*san wu ren yuan* 三无人员], who are so called because they have no ID card, temporary residential card nor work permit. Local authorities have also issued similar regulations to deal with local problems in relation to three-withouts people, and often the scope of this application is even wider than that of Document No. 48.

SR became another source of human rights abuse, as reported officially and unofficially. Some people were put into SR simply because they walked along the street in a 'suspicious way', as in the case of an 80-year-old man in Shenzhen, who was sent to the shelter station in February 2001.<sup>39</sup> In many places, SR measures against people without the three cards turned out to be a highly profitable business or even a source of gang crime. The practice of charging SR fees for detainees encouraged the police to hold as many people as possible. In some SR stations, corrupt police and criminals even conspired to sell sheltered women for prostitution.<sup>40</sup> There were from time to time deaths resulting from the poor conditions and abuses inside the shelters. For example, in October 1994, Zhang Sen, a 25-year-old man, was taken to the shelter by the police and then died from multiple injuries to his body after

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<sup>39</sup> See *Boxun*, 4 February 2001 (<http://peacehall.com/news/gb/yuanqing/2001/02/2001020420151.shtml>).

<sup>40</sup> The Xuzhou Civil Bureau set up a transfer station in a small village, Jiangsu, to the west of the city of Xuzhou, for sending people back home under SR. In collaboration with the villagers, the station management made the transfer of SR people into a profitable business. The villagers first bailed the SR people out of the station and detained them in their houses. The men were held for ransom while the young women were sold into prostitution. In the first major case resolved in Beijing, involving the forcing of teenage girls into prostitution, it was found that many were sold from this village in Xuzhou. See *Renmin ribao*, 12 October 2001 (<http://www.people.com.cn/gb/guandian/26/20011012/579606.html>).

walking along a street in Guangzhou without having his residence permit on him.<sup>41</sup>

This system had long been hidden from the public because most of its victims were poor and obscure. They could be detained by police on a whim because they supposedly sullied a city's image and posed a potential threat to social stability. This is a flagrant abuse of human rights, and reflects the fact that China's rural dwellers remain second-class citizens. Campaigns were regularly launched at festivals in Chinese cities to clear public places of people without the three cards and to drive them back to their home villages. Far from maintaining social stability, the SR system caused widespread resentment among migrants from rural areas.

On some important occasions, such as National Day and Congress Session, and during campaigns for improving the city's image, many people would be sheltered and then repatriated to their home villages, including migrant workers, civil rights activists, petitioners and homeless or mentally-disabled people. On 26 November 1999, for example, the police in Beijing brought in 4,167 people for sheltering. On New Year's Eve, the Beijing authorities mobilised a police force of 9,940 and allocated as many as 123 train compartments to repatriate the so-called three-withouts people.<sup>42</sup> It is estimated that, in 1999, hundreds of thousands of people spent their National Day in more than 700 SP detention centres across the country.<sup>43</sup>

More recently there was much criticism of the SR system by scholars and the public, as more and more SR cases were exposed in the press. This coercive administrative measure was formally abolished in June 2003 and replaced with a new system known as 'shelter and aid' (*shourong jiuzhu* 收容救助), after Sun Zhigang, a university graduate, was reported to have been beaten to death in a shelter station in Guangzhou. This tragic death triggered a national appeal for the abolition of the SR system.<sup>44</sup>

The abolition of SR will not lead to cessation of the dispersing, sheltering, detaining and forceful expulsion of the same category of people. The regime always has alternative administrative measures, often coercive, to handle such social problems and maintain social stability, meet the party's periodic goals and keep control of the newly emerging civil society. During preparations for the hosting of the 2008 Olympic Games, the same

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<sup>41</sup> "Shourongsuo li jianzhuang qingnian liqi siwang" (A robust young man died oddly in the shelter centre), *Zhongguo qingnian bao*, 27 August 2001, p. 7.

<sup>42</sup> *Renmin ribao*, 20 December 2000, p. 9.

<sup>43</sup> Human Rights in China (HRIC), 'Not welcome at the Party: Behind the clean-up of China's cities—A report on administrative detention under "Custody and Repatriation"', 29 September 1999, in *Hong Kong Voice of Democracy* website ([http://www.democracy.org.hk/EN/sep1999/mainland\\_19.htm](http://www.democracy.org.hk/EN/sep1999/mainland_19.htm)).

<sup>44</sup> *Nanfang zhoubao*, 10 June 2003, p. 1.



infringements of human rights as under the SR system are taking place, resulting in widespread concern from international human rights watchdogs such as Human Rights Watch and Amnesty International (AI). AI United Kingdom Director Kate Allen criticised the expansion of RETL to include 'unlawful advertising or leafleting, unlicensed taxis, unlicensed businesses, vagrancy and begging', by the Beijing city authority, in order to clean up the city image. 'Unless basic human rights are urgently improved, China's gleaming Olympic stadiums will hide a brutal reality of injustice, execution, torture and repression.'<sup>45</sup>

According to HRW, the construction of Olympic sites and the attendant upgrade of Beijing's infrastructure have caused widespread forced evictions; and official plans to 'beautify' the city in time for the start of the 2008 Olympic Games have created new projects likely to result in further forced evictions. Reports indicate many, if not most, victims of these evictions have been, and will be, left without compensation. There is also no judicial remedy for the victims, since the Supreme People's Court (SPC) has ruled that compensation or resettlement disputes are not a matter for the judiciary but for the 'relevant government departments' for arbitration. Thus there is no guarantee of a fair settlement, and victims cannot seek injunctions against demolitions.<sup>46</sup>

In June 2005, when some 1,000 residents, evicted for the Aquatic Park, blocked the site and demanded compensation, they were advised that local authorities had already received payment, as opposed to the evicted individuals. In March 2004, the head of the Beijing Municipal Administration of State Land, Resources and Housing (SLRH) stated that 5,000 out of a projected 6,000 households had already been moved to accommodate Olympic sites.<sup>47</sup> Several projects involved the destruction of entire neighbourhoods.

Another project involved the eviction of hundreds of peasants from their homes and fields on the north side of Beijing. Their farmsteads were bulldozed to make way for Olympics-related landscaping and development projects, and new living arrangements were not provided. A media report from the Nanyingfang section of the Chaoyang district in November 2004 describes demolition crews piling residents' belongings into vans while some 100 police officers watched. Journalists were warned not to photograph

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<sup>45</sup> Amnesty International, 'China: New report slams Chinese failure to make promised rights reforms', 21 September 2006, at [http://amnesty.org.uk/news\\_details.asp?NewsID=17103](http://amnesty.org.uk/news_details.asp?NewsID=17103).

<sup>46</sup> 'China curbs court access in house demolitions', *Reuters*, 12 August 2005.

<sup>47</sup> *China Daily*, 3 November 2004, at [http://www.chinadaily.com.cn/english/doc/2004-03/11/content\\_313666.htm](http://www.chinadaily.com.cn/english/doc/2004-03/11/content_313666.htm).

residents being sprayed with foam from fire extinguishers or being taken away by police.<sup>48</sup>

Moreover, Beijing's municipal authorities have shut down more than fifty schools for children of migrant workers, with the goal of closing all unregistered schools for migrants by the end of September 2007. This will leave tens of thousands of children without access to education, in violation of several of Beijing's obligations under international law and China's own human rights policy.<sup>49</sup> This is a sharply cynical act against the regime's human rights policy that gives priority to socio-economic and educational rights, and against the promise of joining the International Covenant on Economic, Social and Cultural Rights, which guarantees a right to housing.

#### 4. Insufficient State Compensation

The constitutional and administrative mechanisms in Chinese law that allow citizens to challenge government actions do not provide effective legal remedies, and Chinese citizens seldom make use of them. Chinese citizens rarely submit proposals to the National People's Congress (NPC) for constitutional and legal review because the review process lacks transparency and citizens cannot compel review. Administrative court challenges to government actions have not increased since 1998. Provincial authorities report an overall decline between 2003 and 2005 in applications for administrative reconsideration, and the total number of such applications in major Chinese municipalities is only a few hundred per year.

Chinese law also permits citizens to petition government officials directly in order to redress their grievances through the 'letters and visits' (*xinfang* 信访) system. Official news media report that Chinese citizens presented 12.7 million petitions to county-level (and higher level) petition bureau during 2005, in contrast with a total of 8 million court cases handled by the Chinese judiciary during the same period. Local officials are disciplined severely for high incidences of petitioning, preventing petitioners from approaching higher authorities. A December 2005 study of the *xinfang* system by a United States non-government organisation (NGO) found that some local authorities have resorted to 'rampant violence and intimidation' in

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<sup>48</sup> 'Families dragged from their homes', *Straits Times*, 16 November 2004, retrieved from <http://straitstimes.asia1.com.sg/sub/asia/story/0,5562,285174,00.html>.

<sup>49</sup> Human Rights Watch, 'China: Beijing closes schools for migrant children in pre-Olympic clean-up—Thousands left without access to education', 25 September 2006, at <http://hrw.org/english/docs/2006/09/26/china14263.htm>.

order to abduct or detain petitioners in Beijing and force them to return home.<sup>50</sup>

External government and party controls limit the independence of the Chinese judiciary. Party officials control the selection of top judicial personnel in all courts, including the SPC, China's highest judicial authority. Since 2005, the government has restricted the efforts of private lawyers and human rights defenders who challenge government abuses. The All China Lawyers Association issued a guiding opinion that restricts the ability of lawyers to handle cases involving large groups of people. Local Chinese authorities have imposed additional restrictions on lawyer advocacy efforts. The SPC 2004-2008 court reform programme, which aims to address growing social unrest by imposing stronger external and internal controls to strengthen institutions that assist citizens with legal claims and disputes, may further weaken the independence of courts and judges.

According to Chinese law, in addition to administrative, judicial and petitionary remedies, citizens are entitled to state compensation when their rights are violated by state agencies. However, in China, state compensation is more symbolic than real. Shortcomings in compensation law mean that in practice there is little to discourage state agencies from violating people's human rights.

The State Compensation Law (SCL) enacted in 1996 requires that the victims file complaints to the court for review of a state action. The court compensation commission then decides, without open trial, whether compensations are to be granted. Even if a victim is compensated, there will be no compensation for psychological harm. Since the PSB and other state agencies are not adequately monitored, lodging a complaint may only bring further abuse and violation. Many other administrative fiats are not under judicial scrutiny even if they conflict with the Constitution and NPC laws. Judicial reviews are limited in both scope and effect, as is state compensation.

Shi Yansheng was wrongly charged with robbery in Heilongjiang and sentenced to death with two years' suspension of execution (later changed into term imprisonment under the Chinese law). Seven family members including his mother were charged with obstruction of justice and were detained for a total of over 5,000 days. Shi himself had lost nearly fourteen years of freedom by the time the real criminal was caught. However, his compensation was only 6,000 *yuan*, one *yuan* for each day.<sup>51</sup>

Another case concerns She Xianglin, who was wrongly imprisoned for eleven years for allegedly murdering his wife who subsequently turned up, alive and well. He was declared innocent and released during a retrial in the

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<sup>50</sup> United States Congressional-Executive Commission on China: *Annual Report*, 20 September 2006, available at <http://www.cecc.gov>.

<sup>51</sup> *Fazhi ribao*, 4 February 2001 (<http://www.legaldaily.com.cn>).

Jingshan People's Court in Hubei Province on 13 April 2005. He demanded state compensation of 4.37 million *yuan* (US\$528,000), based on his mental injuries, restrictions on his freedom and violation of his right to life and health. However, the indemnity for citizens whose freedom has been violated is calculated under the SCL according to average salary without psychological compensation. This puts the amount at 256,000 *yuan* (US\$31,000) for his eleven years in prison.<sup>52</sup>

Arbitrary detention, arrest and sentence during the judicial process are the only violations caused by administrative agencies that are included under state compensation. Article 17 of the SCL provides that a detainee who has committed a minor offence (less than a felony) is not entitled to compensation. The question of compensation only arises when a law enforcer breaks the law and causes damage to a person. In practice, this article seems to convert the SCL into a law that rules out compensation, since it is difficult for a victim to prove that a law enforcer has breached the law.

In the period from the 1990s up to the end of 2001, the people's courts handled nearly 440,000 administrative cases and 2,566 cases concerning state compensation.<sup>53</sup> Although there was an increase in this type of litigation in the 1990s, the increase was much lower than that for other types of litigation in the same period. For example, the Shenzhen Intermediate-Level Court handled only thirteen cases for compensation in 2001, involving 500,000 *yuan*. Of these cases, nine were awarded compensation, involving a total of 418,000 *yuan*. Until 1995, this court has accepted thirty-one such cases and settled twenty-eight, of which only thirteen were compensated. The highest compensation awarded by this court was made in 1993, when a person was wrongly charged with rape. He was granted compensation of 70,000 *yuan* for the financial loss but received no compensation for his emotional suffering and the damage to his reputation. Nationwide, in a single year in the mid-1990s, a total of 1,300 suspects were found not guilty at their first trial or on appeal, but only thirty applicants received compensation.<sup>54</sup>

Citizens who are detained or arrested for crimes that they did not commit have usually suffered both financially and psychologically. One purpose of state compensation is to provide a remedy for individual suffering resulting from official misconduct. The other purpose is to punish

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<sup>52</sup> *China Daily*, 'Wronged man demands compensation', 12 May 2005, at [http://www.chinadaily.com.cn/english/doc/2005-05/12/content\\_441385.htm](http://www.chinadaily.com.cn/english/doc/2005-05/12/content_441385.htm).

<sup>53</sup> Information Office of the State Council, 'Zhongguo renquan fazhan wushi nian (baipishu)' (White paper on the fifty years' development of China's human rights), in *Zhongguo falü nianjian*, 2002, p. 49.

<sup>54</sup> Ma Huide, 'Guojia peichang fa san ren tan' (A discussion of the SCL among three people), *Fazhi ribao*, 14 January 2001, p. 2.

government agencies and their personnel for unlawful actions. Such mechanisms are crucial to the building of a state that is based on the rule of law. If the punishment for government agencies were inappropriate, on the one hand, and the compensation awarded to the victim too low, administrative arbitrariness and abuse would increase. On the other hand, if the compensation for death as a result of official misconduct were high, it would put heavy pressure on the government to reduce such misconduct. Thus, problems with the SCL, especially the exclusion of psychological compensation and the closed-door process for compensation applications, must be addressed in order to protect human rights and hold state officials accountable for inflicting abuse.

## **5. Conclusion**

The party–state is always trying to justify the administrative and legal practice of violating human rights in terms of maintenance of social stability and order. In the name of reducing crime and maintaining social order, the local police frequently abuse citizens' human rights through coercive measures, illegal detention, torture to extract confession and wrongful arrest. The failure of China's legal system to guarantee fair and just trials also leads to large-scale violation of suspects' legal rights, which has seriously undermined the authority of the law and party legitimacy. Neither administrative redress nor state compensation can effectively protect citizens' rights and restrict official behaviour in contemporary China.

The cases discussed here comprise only a small proportion of human rights abuses by state agencies, but they are sufficient to show that human rights violation in China is widespread, systematic, consistent and institutional. The reasons for this include an historic emphasis on social stability and the authoritarian state; a development model; the regime's human rights theory; and flaws in the legal system. The ultimate reason is political concern to maintain social order and the interests of the CCP; and this, in the eyes of the state, justifies the use of coercive means. In addition, the gradual decline in central control over the local states has left a legacy of widespread human rights abuses across the country. Thus, the obstacles to China's human rights development are more political and institutional than cultural. The leadership faces a dilemma. How can it achieve party–state goals and safeguard its position and interests, on the one hand, for which it must rely on the PSB and local states, while also, on the other hand, constraining local state power—especially that of the PSB—in order to prevent human rights abuses that will eventually endanger social stability and party legitimacy?

These challenges will force China to be proactive as it strengthens the law and tightens domestic control. However, the potential problems and threats arising from civil society and the emerging market forces will greatly shape the party–state’s policy on human rights. In the foreseeable future, the relationship between individual and state interests is unlikely to change, despite the fact that the Constitution and law both stress the importance of protecting human and property rights. In the name of safeguarding local stability and other interests, the increasingly powerful local states will still exercise great discretion in the administration of local justice.