

## Changing Policing in the People's Republic of China

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### Abstract

*This paper examines the role played by the police in the changing relations between Party-State and society in the People's Republic of China (PRC). It concentrates on several key dimensions of the role: the police in the local community, relations between the police and other legal institutions, the use of several processes of administrative justice for dealing with allegations of police misconduct, and the recent strengthening of the system of armed police. The essay also considers policing in the context of the often-uneven processes of legal development and law enforcement in the PRC. The principal focus in this paper is the PSB (Gong'an Ju: 公安局) or Public Security Bureau, and its Ministry, the MPS (Gong'an Bu: 公安部) or Ministry of Public Security. Policing development is also increasingly complicated by the fact that it has also become the site for at least three different and to some extent competing ideologies: those of state and state-sponsored violence, harmonious society, and governance according to the rule of law.*

### Introduction

In post-Mao China, there has been substantial development and reform of legal aspects of economic and civil relations and institutions. Legal progress in these areas of Chinese social life has, however, not been matched by the growth of much-needed legal controls over the powers of the state. A greater emphasis on the need for a regular legal framework for the exercise of authority has encouraged the introduction of important new values and rights – most notably, in the 1982 Constitution,<sup>1</sup> freedom of person (Article 37), governance in accordance with the rule of law (Article 5, as amended 1999), and the state protection of human rights (Article 33, as amended 2004). However, the impact in practice of such formal progress has not been impressive. The traditional authority of the state, lingering ideals of a coercive socialist dictatorship, and the perceived need to protect rapid economic growth by ensuring a stable socio-political environment,<sup>2</sup> have all meant

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<sup>1</sup> *Zhonghua Renmin Gongheguo Xianfa*: 中华人民共和国宪法.

<sup>2</sup> A perception the effect of which is exacerbated by an official tendency to encourage moral panics which require strong police response.

much resistance within institutions such as the police to the idea of limiting strong executive powers, and to restricting the influence of the Chinese Communist Party (CCP). The police in China are now located in a difficult interstitial position, sandwiched between on the one hand general developmental goals which reflect increasing commitment to a 'rule of law state', human rights protection, as well as market forces and private property and so on, and on the other, persisting authoritarian norms, institutions and values, many of which retain something of a 'socialist' imprint. The Constitution does, of course, speak to both the new principles of governance and the old Stalinist autocracy, but masks the resulting contradictions by its use of imprecise language and a lack of justiciability. Similarly, the major criminal justice reforms of the 1990s – the 1996 Criminal Procedure Law<sup>3</sup> and the 1997 Criminal Law<sup>4</sup> – embody developments that in some respects assist in the evolution of 'modern' policing in the PRC, while at the same time continuing to grant the police very considerable discretionary powers that hark-back to the pre-eminence of the police in the time of Mao.

At the most general level, the police in the PRC have been moving in the post-Mao era along a policy path of greater professionalism, including specialization (*zhuan yehua*: 专业化), standardization (*gui fan hua*: 规范化), legalization (*fazhi hua*: 法治化), and better education. These developments attempt to move the force away from one focussed on local social control, defence of the CCP, and aggressive suppression of 'antagonistic contradictions'. The process of professional evolution has meant a number of things, including the reintroduction of police ranks as formalized in 1992 by the People's Police Ranking Regulations.<sup>5</sup> A key development too in the transformation was the introduction in the mid-nineties of a People's Police Law, governing the activities of the civilian police.

Thus, as an integral part of the process of policing reform, under the title *The Law of the People's Police of the PRC*<sup>6</sup> a major code was promulgated and put into force (28 February 1995) by the Standing Committee of the National People's Congress. According to Article 1, the Law was introduced, *inter alia*, as part of the efforts to make the police exercise their powers more firmly in accordance with the law (*yifa xingshi zhiquan*: 依法行使职权). Reflective of the felt need on the part of the Chinese leadership in particular to bring standards of policing into line with the needs of a socialist legal system and a socialist market economy rather than functioning as a mass-line organ as it did in the Maoist era, the 1995 Law contains provisions on a whole range of aspects of policing, including the structure of the police force, police duties, training, authority, and disciplinary and complaint processes relating to alleged police misconduct. This code replaced the 1957 People's Police Regulations,<sup>7</sup> a brief document that offered only a short set of

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<sup>3</sup> 1996 *Zhonghua Renmin Gongheguo Xingshi Susong Fa*: 中华人民共和国刑事诉讼法.

<sup>4</sup> 1997 *Zhonghua Renmin Gongheguo Xingshi Fa*: 中华人民共和国刑法.

<sup>5</sup> *Zhonghua Renmin Gongheguo Renmin Jingcha Xian Tiaoli*: 中华人民共和国人民警察警衔条例.

<sup>6</sup> *Zhonghua Renmin Gongheguo Renmin Jingcha Fa*: 中华人民共和国人民警察法.

<sup>7</sup> *Zhonghua Renmin Gongheguo Renmin Jingcha Tiaoli*: 中华人民共和国人民警察条例.

simply worded, broad principles that would infuse the functions, organization and powers of the police.<sup>8</sup>

Nevertheless, the 1995 Law did not significantly narrow down the very extensive remit of police work that had developed in the pre-1979 era. The Law continues to identify a very extensive range of responsibilities, indicating the dominant role that the police are expected to play in regulating society. Thus, Article 2 of the 1995 Law specifies that the functions of the people's police include safeguarding state security, maintaining public order, defending the personal safety, freedom and legal property of citizens, protecting public property, and preventing, stopping and punishing 'illegal and criminal activities' (*weifa fanzui huodong*: 违法犯罪活动). These functions are then elaborated on and extended in Article 6 to include:

- (1) preventing, stopping and investigating illegal and criminal activities;
- (2) maintaining public order and stopping acts that endanger public order;
- (3) ensuring traffic safety, maintaining traffic order and dealing with traffic accidents;
- (4) organizing and carrying out fire prevention and control and supervising routine fire protection;
- (5) controlling firearms and ammunition, and keeping under surveillance dangerous articles such as knives, inflammables, explosives, deadly poisons, and radioactive materials;
- (6) administering special trades and professions as provided by laws and regulations;

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<sup>8</sup> It should be noted that in addition to the People's Police Law, in 2000 the Ministry of Public Security (MPS) issued the Notice Regarding Implementation of the State Council Decision on Comprehensively Carrying Forward Administration According to Law (*Gong'an Bu Guanyu Guanche Luoshi 'Guowuyuan Guanyu Quanguo Tuijin Yifa Xingzheng de Jueding' de Tongzhi*: 公安部关于贯彻落实'国务院关于全国推进依法行政的决定'的通知). The Notice was intended to strengthen the legal powers of the police while at the same time correcting inadequacies in police work. In this way, standards of local law enforcement would be enhanced and the system of supervision of law enforcement work reinforced. A little earlier, in 1999, the MPS also issued the Notice on General Implementation in Public Security Organs Nationwide of the System of Openness in Police Work (*Gong'an Bu Guanyu Zai Quanguo Gong'an Jiguan Pubian Shixing Jingwu Gongkai Zhidu de Tongzhi*: 公安部关于在全国公安机关普遍实行警务公开制度的通知). This implemented a programme of 'rule according to law' and also was intended to enhance institution building. Also, in 2000, the MPS in a Decision on Strengthening Public Security Legal System Construction (*Guanyu Jiaqiang Gong'an Fazhi Jianshe de Jueding*: 公安部关于加强公安法制建设的决定), defined its plan to establish a comprehensive and regularized corpus of laws, regulations and rules on: police organization; regulating police powers, and the creation of a comprehensive, effective system for the supervision of police enforcement work by 2005. These priorities were reiterated in the MPS Opinion on Public Security Organs Implementing the 'Outline on Comprehensively Carrying Forward Implementation of Administration According to Law' (*Gong'an Bu Gong'an Jiguan Guanche Shishi 'Quanmian Tuijin Yifa Xingzheng Shishi Gangyao' de Yijian*: 公安部公安机关贯彻实施'全面推进依法行政事实纲要'的意见) 2004, and are intended to promote the legal standards of public security administrative work.

- (7) serving as bodyguards for persons specially designated by the State and protecting important places and installations;
- (8) maintaining control over assemblies, processions and demonstrations;
- (9) administering matters of household registration, the nationality of citizens, and entry into and exit from China, and handling matters relating to the residence and travel of aliens within Chinese territory;
- (10) maintaining public order along border (frontier) areas;
- (11) imposing criminal punishment with respect to criminals sentenced to public surveillance, criminal detention, or deprived of political rights and criminals serving sentences outside prison, and to exercise supervision over and inspection of criminals who are granted suspension of punishment or parole;
- (12) supervising and administering the work of protecting the 'computer information system';
- (13) guiding and supervising security work in State organs, public organizations, enterprises, institutions, and major construction projects; and guiding mass organizations such as public security committees in their work of maintaining public order and preventing crime; and
- (14) carrying out other duties as stipulated by [other] laws and regulations.

This very broad range of functions that the police are still expected to perform suggests several things. First, it may well be one of the main justifications for continuing to characterize the Chinese political and legal systems as constitutive of a 'police state'. Second, it has necessitated significant functional subdivisions within the 'People's Police' in order to deal effectively with the issues confronting the force: public security and crime prevention, criminal detection work, traffic control, foreign affairs (including passports), border security, fire-fighting and prevention, drug control, counter-terrorism, and household registration. Thirdly, it may help to explain why it is that the police are so reluctant to lose their powers of administrative punishment – there is a felt need to maintain a broad and highly discretionary range of administrative penalties, to be applied without the immediate threat of court and procuracy oversight, in order to deal with the many kinds of deviant conduct that the police will encounter in fulfilling these multifarious tasks. In a sense, it is a matching of responsibility and authority.

The principal focus in this paper is the PSB (*Gong'an Ju*: 公安局) or Public Security Bureau, and its Ministry, the MPS (*Gong'an Bu*: 公安部) or Ministry of Public Security. However, indicative of the emphasis placed on the importance of the role of the police, the PSB is only one of several types of police force operating in China today, albeit statistically the most important. Indeed, the officially preferred term for most types of police is now 'police' or *jingcha* (警察) – or People's Police (*Renmin Jingcha*: 人民警察) and the PSB is the dominant but not sole force operating under that label. In the People's Police Law 1995, Article 2, it is specified that the people's police consist of policemen working in public security organs (*gong'an jiguan*: 公安机关, state security organs (*guojia anquan jiguan*: 国家安全机关), prisons (*jianyu*: 监狱), and organs in charge of Re-education Through Labour (RTL) (*Laodong Jiaoyang Guanli Jiguan*) 劳动教养管理机关 as well as Judicial Policemen working in the People's Courts (*Renmin Fayuan de Sifa Jingcha*: 人民法院的司法警察) and in the People's Procuracies (*Renmin Jianchayuan de Sifa Jingcha*: 人民检察院). There are, however, no specific

provisions in the People's Police Law in regard to the duties and functions of the additional types of police. These additional areas of police work are governed separately: the state security police by the 1993 State Security Law,<sup>9</sup> the prison police by the 1994 Prison Law,<sup>10</sup> and the judicial police by the organic laws of the courts (2006)<sup>11</sup> and the procuracy 1983.<sup>12</sup> It may be sometimes necessary in this paper to draw on materials which refer to the 'police' in this broader sense.

At the same time, mention should also be made here of the People's Armed Police Force (*Renmin Wuzhuang Jingcha Budui*: 人民武装警察部队). This force has grown in importance over the past decade, partly in response to growing civil unrest, and partly to fill a vacuum created by the development of a more professionally orientated Peoples' Liberation Army into a force that wants to concern itself with responding to external threats rather than dealing with domestic disorder.

Another feature in the changing landscape of policing in the PRC is the growth of 'privatized' policing. This takes several forms but includes two principal types: the direct employment of local people without the relevant formal qualifications by local police forces, and the creation of private security companies which are often owned and to a degree staffed by the local PSB. To a significant extent, both forms reflect the difficulties the regular civilian police face in carrying out their many duties effectively in a rapidly changing social context.

### The Police in the Local Community

As we have noted, the path of change since the late 1970s has, broadly speaking, been away from a police force that is primarily focussed on the local community and strongly motivated ideologically to one that that is more professionally orientated and more formally committed to crime control. In the first thirty years of CP rule, the PSB's main function was to control counter-revolutionaries, including, if necessary, by the use of coercive methods. The PSB maintained close links with local-level institutions such as residents committees, both reinforcing the power of these institutions and at the same time drawing upon them to exercise more effective police domination. It also administered a powerful instrument of state command, namely, the household register, including the supplementary special household register of information about political deviance (Dutton 2000: 82). In addition, the police played an important role in the mass campaigns conducted in the interests of promoting class struggle, unrestrained by notions such as due process, for such values were officially characterized as tools of a bourgeois state and the old ruling class.

In the post-Mao period, these links have continued and indeed were strengthened in the 1980s as a part of a programme to develop comprehensive management of public security with, in particular, refurbished local public security

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<sup>9</sup> *Zhonghua Renmin Gongheguo Guojia Anquan Fa*: 中华人民共和国国家安全法.

<sup>10</sup> *Zhonghua Renmin Gongheguo Jianyu Fa*: 中华人民共和国监狱法.

<sup>11</sup> *Zhonghua Renmin Gongheguo Renmin Fayuan Fa*: 中华人民共和国人民法院组织法.

<sup>12</sup> *Zhonghua Renmin Gongheguo Renmin Jiancha Yuan Fa*: 中华人民共和国人民检察院组织法.

defence committees. Thus, the 1989 Urban Resident's Committee Organic Law<sup>13</sup> provides:

Article 3: The tasks of a residents committee shall include:... (4) assisting in the maintenance of public security;

Article 13: A residents committee shall... establish sub-committees for... public security...

In addition, the 1998 Organic Law of the Villagers' Committees<sup>14</sup> stipulates:

Article 25: A villagers committee shall... establish sub-committees for... public security...

As we have also seen, Article 13 of the People's Police Law 1995 requires the police to guide local organizations such as the public security committees in maintaining public order and preventing crime. In addition, in the post-Mao era and directly inspired by the ideas of Deng Xiaoping, the mass campaign continues to be relied on by local state (notably the police) and mass organizations (notably the public security committees), co-operating together under the leadership of the Party and local police chiefs, to campaign against serious crime. Sometimes such campaigns have been conducted in a general way and sometimes have been focused on specific types of crime (Dutton 2000: 63, 72).

Nevertheless, since the early 1980s, a reform process has been in place. The Party's Central Legal Political Committee has encouraged greater reliance on law as part of a new policy of major reforms in the work of the public security organs, and subsequently such reforms have led to the creation of a greater 'professional ethos' in the operation of the police. This has meant a more specialized and law-abiding police force, in which police officers are formally educated in the theory and practice of policing, technical training in subjects such as forensics is provided for specialist areas of police work, police publications such as the *Renmin Gong'an Bao* (人民公安报)<sup>15</sup> provide an information community for the force, and Western learning in the form of criminology and criminal psychology is offered. Alongside these changes, new techniques of policing such as mobile policing and the pillbox system, and the 'emergency hotline' are employed. Moreover, as Dutton has emphasized, even the continued use of refurbished pre-1979 techniques of the police mass campaign, and comprehensive social security (*shehui zhi'an zonghe zhili*: 社会治安综合治理) and so on, have been restored with new meaning (servicing rapid economic development) and new rewards (financial incentives instead of political probity) (Dutton 2000: 63). This process of development has helped to create a certain degree of professional and institutional identity among the police. The People's Police is no longer a force as firmly locked into the local

<sup>13</sup> *Zhonghua Renmin Gongheguo Chengshi Jumin Weiyuanhui Zuzhi Fa*: 中华人民共和国城市居民委员会组织法.

<sup>14</sup> *Zhonghua Renmin Gongheguo Cunmin Weiyuanhui Zuzhi Fa*: 中华人民共和国村民委员会组织法.

<sup>15</sup> Now available in an online version at <http://www.cpd.com.cn/gb/newspaper>.

community and dedicated to social control and political morality in the way that it once was.

Nevertheless, and despite these changes, as we have indicated above, the police, and especially the local police stations (*paichusuo*: 派出所) and their close ties with neighbourhood committees (which bear important law enforcement and dispute resolution functions at the local community level, especially through their security defence committees), and control of household registration, remain an important aspect of CCP control in China. This control has been especially important in the maintenance of the people's democratic dictatorship, and continues to be important despite the development of some form of civil society in the post-Mao period. Indeed, reliance on local police forces by local authorities for containing civil unrest – especially the so-called 'mass incidents' (*quntixing shijian*: 群体性事件) – has become an important feature of policing in the past decade or so, and in some ways is a matter of growing concern for the PRC's central authorities. Problems such as the excessive use of force by local police are difficult to deal with from the centre, however, in large part because reliance on anti-crime campaigns and comprehensive public security management (see below) has had the effect of reinforcing the powers of the local Party Committees, and the local police, as these were the bodies considered to be best placed to direct these aspects of social control.

Like the mass campaign, the policy of comprehensive management of public security<sup>16</sup> has relied on local state and mass organizations – notably the police and the public security committees – cooperating under the leadership of the Party and local police chiefs to implement long-term policies of the prevention of crime and social reintegration of ex-offenders. The system is considered so important that leadership of it has been made the responsibility of a special body in the Party: the Central Committee for Comprehensive Management of Public Security of the CPC. It has been argued that 'comprehensive management [is] ... the miniaturization and specialization of the Maoist all-round dictatorship of the proletariat ... in the way it operated ... it differed little in form from the Maoist political-ideological campaign for an all-round dictatorship' (Dutton 2000: 75).

Nevertheless, since the mid-1980s local-level comprehensive management of public security has operated through a contract-responsibility system in which members of the security defence committees are paid for their services and rewarded for good performance with bonuses. In addition, because the system of control is now less effective than it once was, as a result of the changing nature of the local community, so a system of using paid local informants in police work has also been necessary. This has brought the police into regular contact with the often marginalized individuals prepared to provide them with relevant information on criminal activity and who are able to do so in part because their own conduct keeps them in touch with the local criminal world. In turn, this has contributed to the development of the problem of police corruption, noted below.

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<sup>16</sup> This is an integrated system of local social control, the reasoning behind which is that as deviance is a multifaceted issue, and often the product of a number of causes, so the systems response should be 'comprehensive' in order to ensure a "normal" moral order is maintained (Biddulph 2007: 103-109)".

The household registration (*hukou*: 戶口) system shored up the ideal of the all-embracing urban work unit which bore responsibility for every aspect of a worker's life, and the same system supported the rural production brigade, from which countryfolk were unable to move away because of the restrictions on movement to the cities imposed through household registration. As we have seen, maintenance of the system of household registration is an important aspect of the work of the local police. One very important impact of the economic reforms has of course been increased movement of population and the partial breakdown and relaxation of the system, putting additional pressure on the police while in some ways reducing their power. On the other hand, computerization of the system has helped to make the record-keeping easier and information more transferable between different parts of the country.

Linked with this system were, for many years, two extraordinary powers of detention exercised by the police: Detention for Repatriation (*shourong qiansong*: 收容遣送) and Detention for Investigation (*shourong shencha*: 收容审查). The latter system was developed in the mid-1950s as part of efforts to strengthen the system of household registration by dealing – through processes of detention and repatriation – with rural dwellers who have not been permitted to migrate to urban centres but who had nevertheless done so. It was also used to keep in custody and investigate others suspected of criminal conduct. Subsequently, in the mid-1970s, responsibility for illicit migrants was transferred to the Civil Affairs Bureau, and the detention and investigation of criminal suspects and other deviants left in the hands of the PSB.

Thus, the method of custody known as Detention for Repatriation (*shourong qiansong*: 收容遣送) was made the responsibility of Civil Affairs departments, and this method was until several years ago an important resource for dealing with rural migrants who had moved to the city in breach of the household registration rules. Persons detained under this system were kept in special centres awaiting deportation back to their home village. However, while these centres were the formal responsibility of the local Civil Affairs department, in practice the operation of the system remained firmly in the hands of the PSB. Writing in 2003, one commentator who was himself subject to this detention also noted that even with official papers there was a danger that anybody looking 'different' – for example, by wearing shabby clothes – would be swept up in the system so that:

In practice, detainees in [these] centers tend to be the poor, the mentally ill, migrant workers, women who have been kidnapped for sale on an underground market, and petitioners who have entered cities to seek redress of injustices from government officials. Estimates of the number detained since 1989 run into the millions... The conditions in [these] centers are about as bad as one could imagine. Food and sanitary conditions are abominable, even worse than in regular prisons and labor camps [which the writer has also experienced]. Detainees are routinely subjected to beatings by police or cell bosses, sometimes resulting in death. (Tong 2003: 42-43)

Indeed, as we now know it was the maltreatment of Mr Sun Zhigang, a college graduate from Hubei who was detained in the spring of 2003 under the system after arriving in Guangzhou to take up employment, that led to his death. He died



in custody within a few days of his apprehension, after he was mistaken as a vagrant and detained for failing to bring with him to the city his temporary residency card or his identity card. The unexplained cause of death was the subject of extensive media coverage, and several months later another case of police misconduct also caused great disquiet: the Si Liyi case. A mother was detained by the police in Chengdu for a theft committed to support a drug addiction, and was therefore unable to care for her young daughter, Siyi, so that the young girl died in the apartment where mother and daughter resided. The inadequate response of the authorities to the SARS outbreak at that time further contributed to a general sense of malaise, paving the way for reform.

In addition to creating pressure for police reform in a number of areas (Fu 2005), the Sun case in particular led to the abolition of Detention for Repatriation later in the year. This followed arguments put to the Standing Committee of the National People's Congress under the terms of the 2000 Legislation Law,<sup>17</sup> about the lawfulness of the State Council's 1982 Measures for the Detention and Repatriation of Vagrants and Beggars in Cities.<sup>18</sup> The Administrative Punishments Law 1996,<sup>19</sup> and the Law on Legislation 2000 both provided in effect that it was only by laws passed by the National People's Congress or its Standing Committee that could provide a proper legal basis for depriving citizens of their personal freedom. Accordingly, the system of Detention for Repatriation was unlawful. On 20 June 2003, Premier Wen Jiabao announced the abolition of the 1982 Measures and with them the harsh system of custody that had developed over the course of two decades. As has been emphasized, this was meaningful legal reform of police powers, resulting from a serious citizen initiative (Hand 2006). But at the same time, we shall see below that the incorporation of the related form of custody – *shourong shencha* (收容审查) or Detention for Investigation – into the 1996 revised Criminal Procedure Law has meant that the police still possess very considerable powers of detention prior to formal arrest. Moreover, as we shall also see, administrative detention under the system of the public security administration punishments has since 2005 extended significantly police powers of administrative detention.

The system of *Shourong Shencha* (收容审查) or Detention for Investigation was formalized in late 1957 by the Central Committee of the CCP and the State Council. As it offered a flexible and police-friendly framework for dealing with criminal suspects, reliance on it by the PSB expanded in the post-Mao era, to the point where it was considered by the Ministry of Public Security, various people's congresses and sections of the public to constitute a serious misuse of police authority, and to be a system that lacked a proper justification in law (Biddulph 2005: 221). The introduction of the Administrative Litigation Law in 1990<sup>20</sup> also created problems, including the difficulty of determining whether detention for investigation should be characterized as a criminal measure or as a form of

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<sup>17</sup> *Zhonghua Renmin Gongheguo Lifa Fa*: 中华人民共和国立法法.

<sup>18</sup> *Chengshi Liulang Qitao Renyuan Shourong Qiansong Banfa*: 城市流浪乞讨人员收容遣送办法.

<sup>19</sup> *Zhonghua Renmin Gongheguo Xingzheng Chufa Fa*: 中华人民共和国行政处罚法.

<sup>20</sup> *Zhonghua Renmin Gongheguo Xingzheng Susong Fa*: 中华人民共和国行政诉讼法. Promulgated 1989, in force 1990.

administrative action, a question that was resolved in favour of the latter by a Supreme People's Court (SPC) Opinion (Biddulph 2005: 222). But neither that document nor the Ministry of Public Security's subsequent 'Notice on Several Questions Concerning the Implementation by Public Security Organs of the 'Administrative Litigation Law' of the PRC' (1990),<sup>21</sup> addressed the basic issues: the problematic nature of the legal basis of Detention for Investigation. Moreover, the declaration by the MPS that it was 'administrative' in nature was not a view that everybody shared, so that the issue came up again in subsequent debates about criminal justice.

Indeed, it was quickly resurrected in early 1990s in the discourse within China about the need for a major reform of the criminal justice system, a development which culminated in the revised 1996 Criminal Procedure Law and the revised 1997 Criminal Law. More importantly, this discourse raised once more the issue of the lawfulness of the system, in particular in view of Article 37 of the Constitution, and its inclusion of a guarantee of freedom of the person in the absence of a lawful arrest:

Article 37: The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuracy or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.

As a result, the system of Detention for Investigation was formally abolished by the revised Law of Criminal Procedure 1996. As Biddulph has shown, however, the extraordinary and much-criticized powers of administrative detention formerly enjoyed by the public security organs were only seemingly abolished by the revised Law. Many of the key aspects of the system were in fact inserted into the refurbished Law, so that in reality police powers were not significantly eroded by the reform. The standard of arrest was reduced (Article 60), the categories of suspicious person that might be detained were broadened (Article 61 [7]) and the time restrictions relaxed in 'more serious' cases:

Article 69: If the public security organ deems it necessary to arrest a detainee, it shall, within three days after the detention, submit a request to the People's Procuracy for examination and approval. Under special circumstances, the time limit for submitting a request for examination and approval may be extended by one to four days.

As to the arrest of a major suspect involved in crimes committed from one place to another, repeatedly, or in a gang, the time limit for submitting a request for examination and approval may be extended to 30 days.

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<sup>21</sup> 1990 公安部关于公安机关贯彻实施《行政诉讼法》若干问题的通知.

The People's Procuracy shall decide either to approve or disapprove the arrest within seven days from the date of receiving the written request for approval of arrest submitted by a public security organ.

Thus, the reality is that in many circumstances the Criminal Procedure Law 1996 allows the police to detain many categories of suspect for up to 37 days of detention before it needs to meet the legal requirement of procuratorial approval of arrest. The subsequently-issued 'Ministry of Public Security Regulations on Procedures for Handling Criminal Cases' (1998),<sup>22</sup> made the regime even more generous to the police. The system of Detention for Investigation may thus no longer exist in name, but the powers that it gave the police have not in fact been significantly altered by the criminal justice reforms of the mid-1990s.

In addition, and despite these apparent reforms, an important continuing feature of the criminal justice system of the PRC is the extensive reliance on the use of administrative penalties, including administrative forms of detention. This reliance is, however, also inconsistent in some respects with the International Covenant on Civil and Political Rights (ICCPR) which China signed in 1998. Although the PRC has, of course, yet to accede to that Convention, by signing the ICCPR China has committed itself not to act in ways that would defeat the object and purpose of the treaty. There is, however, a clear contradiction between the system of administrative detention under, in particular, Re-education Through Labour, in which the police play a very major role, and the failure of the Chinese legal system to provide prompt judicial review of the detention decisions, as required by Article 9 [4] of the ICCPR:

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

China's system of Re-education Through Labour (RTL) was first authorized by a State Council decision 1957,<sup>23</sup> having been practiced since 1949. It is still valid,<sup>24</sup> although there are widely divergent views within Chinese legal circles about the future of this detention system. Those who want to encourage a fairly speedy accession to the International Convention on Civil and Political Rights would like to phase it out, as the ICCPR stresses the importance of determining guilt and punishment through courts, and the heavy reliance in China on administrative sanctioning is therefore a barrier to accession. On the other hand, there are officials in China who point out that special regimes exist elsewhere in the world for dealing with juvenile delinquents that do not impose the full rigours of the Criminal

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<sup>22</sup> *Gong'an Bu Gong'an Jiguan Banli Xingshi Anjian Chengxu Guiding*: 公安部公安机关办理刑事案件程序规定.

<sup>23</sup> *Guowuyuan Guanyu Laodong Jiaoyang de Jueding*: 国务院关于劳动教养问题的决定.

<sup>24</sup> 1979 State Council, Supplementary Provisions on Regulations on Re-education Through Labour (*Guowuyuan Guanyu Gongbu 'Guoyuyuan Laodong Jiaoyang de Buchong Guiding,' de Tongzhi*: 国务院关于公布'国务院劳动教养的补充规定'的通知).

Justice system on young people, and that China's system of Re-education Through Labour is not so very different from these special regimes.

In general, Re-education Through Labour is used where the Administrative Penalties for Public Security fail to have the desired effect. It was revised in November 1979 in the form of Supplementary Provisions which were, it is said in their introductory paragraph, introduced in order to 'enforce better' the 1957 State Council Decision. In its scope, the system is very broad – the 1957 Decision declares that the following categories of person may be interned for rehabilitation:

those who do not engage in proper employment, behave like hooligans or petty thieves, and refuse to mend their ways despite repeated admonition, counter-revolutionaries and anti-socialist reactionaries whose acts do not warrant criminal penalties,  
persons who are able to work but who refuse to do so, and  
persons who refuse to obey their work assignments.

Re-education Through Labour primarily applies to young offenders (late teens to thirties). The ostensible guiding spirit is one of education and reform, although some wages are supposed to be paid for work done. There was originally no maximum term. Since detainees are not being 'punished' but, rather, 'rehabilitated', the interned person under the initial system simply stayed until her or his successful rehabilitation was complete. The term was apparently limited to three years in 1962, and this limit was reconfirmed in 1979, although an extra year is possible 'if necessary' under Article 3 of the 1979 Supplementary Provisions for those who fail to be sufficiently 're-educated'.

The procedure for committing somebody to Re-education Through Labour is that a request for a certain person to undergo rehabilitation through labour is made to the local government authority by one or more local bodies or other actors: the police, work unit, school, parents or guardians can all make such a request under Article 3 of the 1957 Decision. Operating under the leadership of the local Bureau of Justice, the Re-education Through Labour Committees will decide on the case, according to the 1979 Supplementary Regulations. As I have indicated, this form of punishment is a matter of increasing controversy following the PRC's signing of the ICCPR – it is a serious penalty which is not imposed by courts and therefore quite inconsistent with the spirit of the Convention. It is also argued that Re-education Through Labour is authorized under administrative regulations only and therefore is in violation of the Legislation Law 2000. As we have seen, that Law requires that all deprivations of personal liberty be authorized by national law and not administrative regulations. As a process of 'reform', it is one which may involve humiliation of the inmate, mental abuse, and an attempt to re-programme the thinking of the inmate. However, it is a very powerful source of police power in the local community, and is considered a very effective way of dealing with not only the issue of juvenile delinquency but also the problem of the 'Falungong'. It therefore persists.

China ratified the UN Convention Against Torture in 1988. The UN Special Rapporteur on Torture in his report following his visit to China at the end of 2005 (dated March 2006), concluded that the RTL system and other forms of

administrative detention go beyond legitimate rehabilitation measures provided for in Article 10 of the ICCPR:

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

What is important to note here, however, is the fact that the Chinese government is not trying to abolish the system in order to conform to international standards. Instead, the current thinking is to move China towards a codification of the system itself.

The UN Committee Against Torture, however, is clear:

**Administrative detention, including 'Re-education Through Labour'**

13. The Committee reiterates its previous recommendation to the State party to consider abolishing all forms of administrative detention (A/55/44, para.127). The Committee remains concerned with the extended use of all forms of administrative detention, including 'Re-education through Labour', for individuals who have never had their case tried in court, nor the possibility of challenging their administrative detention. It is also concerned with the failure to investigate allegations of torture and other ill-treatment in 'Re-education through Labour' (RTL) facilities, in particular against members of certain religious and ethnic minority groups. While the State party has indicated that the RTL system has recently been reformed and that further reform of the system is currently being envisaged, the Committee is concerned with repeated delays, despite calls from Chinese scholars to abolish the system (arts. 2 and 11).

The State party should immediately abolish all forms of administrative detention, including 'Re-education through Labour'. The State party should provide more information, including current statistics, on those currently subject to administrative detention, the reasons for their detention, the means of challenging such detention and the safeguards put in place to prevent torture and ill-treatment in RTL facilities.

(UN Committee Against Torture 2008)

In addition to RTL there is, as we have noted, another system of administrative punishments. This can be traced back to the 1950s, and is now governed by the Public Security Administration Punishment Law (PSAPL) 2005 (replacing the 1994 Regulations on Public Security Administration Punishment).<sup>25</sup> According to this Law, 'Public Security' offences include public order disturbances, traffic offences, prostitution, drug use, and other 'minor crimes' that are considered better sanctioned by administrative punishments than by formal criminal sentences. Administrative punishments may range from a warning or fine to detention. For a governmental system which announced in effect that it is to be governed in accordance with the rule of law, the PSAPL 2005 provides only limited supportive evidence. In addition to establishing more severe punishments than its statutory predecessor, it creates a very large number new offences subject to administrative

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<sup>25</sup> *Zhonghua Renmin Gongheguo Zhi'an Guanli Chufa Fa*: 中华人民共和国治安管理处罚法.

punishment: for example, 'cyber offences', 'taking on the name of religion or *qigong* to carry out activities disturbing public order' and 'inciting or plotting illegal assemblies, marches or demonstrations'. The PSAPL was also passed in order to provide a basis in national law for short-term detentions of up to 20 days which are not going to lead to a criminal prosecution. In addition, a new category of punishment – withdrawal of licence – is introduced on top of the existing categories of warning, financial penalty, and administrative detention (Article 10). As we shall see, this has more significance than might be thought at first glance. Even more significantly, the 2005 PSAPL reaffirms the role of the police as the organs responsible for determining and administering punishments for public security violations.

Other changes are a little more reassuring. Thus, a whole chapter is specifically designed to limit police power, and more specifically to prohibit the use of torture and violence to obtain confessions (Chapter 5). In addition, a person who objects to a public security punishment decision may directly bring an administrative suit (Article 102), whereas under the 1994 regime, procedurally the person against whom a punishment is to be imposed had to request 'in-house' administrative reconsideration before bringing the public security organs to court in an administrative suit. Thirdly, protection of the minor is improved: a minor aged between 16 and 18 who commits an offence for the first time is not to be subjected to administrative punishments (Article 21 [2]).

The authority provided by the 2005 PSAPL for widespread police use of administrative sanctions is needed, it has been suggested above, in large part because of the very wide range of responsibilities of the police. In addition, such sanctions have proved very convenient for the police in dealing with types of deviant conduct that are felt to be proliferating in the era of economic reform. Drug traffickers and users, prostitutes, juvenile delinquents, burglars and other forms of 'petty criminal' are so targeted. Dutton argues that these kinds of sanction also represent an important source of revenue for a financially hard-pressed police force. The fines imposed on those engaged in prostitution in particular provide especially important funding for local forces, some of which could not operate without such extraction:

Cash-strapped police forces employed the new financial logic of economic reform to remedy the ancient problem of prostitution. Increasingly, police viewed prostitution as a 'milch cow' that would pay, through fines, for the vast array of financial incentive schemes and other costs that held the local [public] security system intact. A mechanism that began as a deterrent very quickly developed into a money-making business ... as police critic Song Haobo [(1994)] explains: In some places, the law enforcement agencies took prostitutes and their clients in, not to detain, control, or educate them, but simply to extract fines. (Dutton 2000: 78)

Throughout most if not all the period of CCP rule since 1949, the budget of the public security forces has been provided by local governments at the same level in the national bureaucracy. However, the felt need to develop greater and more specialized policing in the post-Mao era has placed significant pressure on the system of police financing. Local governments have been reluctant to meet

demands for enhanced police funding, and additional sources of revenue such as those noted above, plus licensing, fines relating to other forms of public order misconduct, motoring regulation and offences, and so on, are therefore needed.

Indeed, as these revenues are not included in the ordinary budgetary calculations of the local police, so they have steadily increased in importance. The rules encourage what Tanner and Green (2007: 666) characterize as the 'predatory fine collection' tendencies of local police forces, especially in the economically more advanced areas where such an approach is both more necessary and more lucrative.<sup>26</sup> This, in turn, encourages greater disparities of funding between police in wealthier parts of China and other areas, as well as greater attention in the wealthier parts to problems that will generate funds rather than to those which are necessarily the most pressing. Sometimes the pressure comes from local governments, as they increasingly expect PSB fines, confiscations and fees to compensate for their own shortfalls in finance. As a result, the Public Security leadership has repeatedly complained that lower-level police forces are all-too-often used inappropriately to deal with administrative difficulties such as collecting grain from farmers, resumption of land, as well as enforcing birth limitation rules, apprehending and holding parties to a contract dispute, tearing down the houses of Christians, and collecting arrears (for example, for fines imposed for violation of birth control regulations) (Tanner and Green 2007: 666; see also Fu and Choy 2004).

Another feature in the emerging new landscape of Chinese policing is the growth of 'privatized' policing. This, too, is a development that owes much to the system of police finance and its inadequacies. Private policing takes several forms but in the main includes, first, the direct hiring of local people without the relevant formal qualifications by local police forces and, second, the creation of private security companies which are, in fact, wholly owned and partly staffed by the local PSB. There have been somewhat contradictory pressures at work in police staffing policies, and such pressures have not been conducive to improving the professionalization of the police force. On the one hand, the police have been put under particular political pressure to take on demobilized PLA members by Party

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<sup>26</sup> Perhaps most notably in the case of Shanghai, where entrapment and framing of suspects for revenue generating purposes became a widespread practice. This approach has become popularly referred to as 'fishing-style enforcement of law' (*diaoyu zhifa*: 钓鱼执法). This term is now widely used to characterize the inventive techniques of police, especially traffic police, for extorting money in the form of fines from vulnerable sections of the public. In a *cause célèbre* in late 2009, a young worker newly arrived in Shanghai, Mr Sun Zhongjie, cut off the little finger of his left hand in protest at the way in which Shanghai traffic police had arrested him for operating an illegal taxi business when in fact all he had done was to stop his vehicle to give assistance to a pedestrian apparently in need of help. The pedestrian turned out to be Chen Xiongji, a traffic policeman intent on entrapment. Initially fined 10,000 RMB for running an illegal taxi business, Sun eventually had the case dismissed, and the fine rescinded. He also received an apology from Shanghai City Administration and Law Enforcement Bureau for Pudong New Area District. He does, however, remain short of one finger (See, for example, *Xinhua* 2009; for an extended analysis of the problem of entrapment and framing for revenue purposes see Wu and Zhu 2009).

political legal departments. On the other hand, there has been the development of 'contract police' (*hetong minjing*: 合同民警), with often untrained or poorly trained recruits such as unemployed youths taken on in order to supplement the local official police force, so that they have come to constitute as much as ten per cent of the local force. The problems such recruits exacerbate or create include a greater tendency to abuse and even torture detainees, and financial misconduct.

Here, it is important to bear in mind that while China may be a suitable case for characterization as a 'police state', especially in the sense that the Party-police nexus is a core feature of the system of social and political-legal control, and the police have a very broad range of functions in that system. This may give rise to a misleading impression, however, for in reality the number of official police on the ground is actually very limited. The total size of the force is below two million personnel, or one officer for every 600-700 persons across the country, with even higher ratios in the remoter, less economically advanced, areas of the country. These low police numbers are also a contributory factor in the growing reliance on contract and related forms of 'quasi-police' with a more specialized brief. Many specific areas of economic and governmental life have their own security units outside the 'civil service' police force. There has also been a substantial growth in recent years in the so-called *bao'an gongsi* (保安公司) or private security companies that are often actually owned and managed by the PSB.

Chinese private security companies differ from those in the West in that they are all wholly owned subsidiaries of the local branches of the Public Security Ministry (PSM). PSM bureaus directly own and operate these businesses. The public security forces monopolize this industry and have complete control over staffing. Hence, the police force has 'allocated' all senior staff positions within these companies to formally high-ranking officials from within the provincial Public Security Bureau or the Ministry of Public Security. These companies now cover about one-third of all urban police work and they derive most of their profits from guarding banks, restaurants, and other such establishments (Dutton 2000).

But the less well-organized companies of this type also tend to be inadequately trained, and to engage in abusive conduct. The widespread development of these security companies has also been stimulated by the development of 'private' housing estates, which very often possess their own security staff.

Some attempt has been made to identify responsibility for the conduct of these private arrangements in the Criminal Law and in official commentary on that Law. Thus, the 1997 Criminal Law includes the provision that:

Article 93, Para. 2: Persons who perform public service in state-owned companies or, enterprises, institutions or people's organizations, persons who are assigned by state organs, state-owned companies, enterprises or institutions to companies, enterprises or institutions that are not owned by the State or people's organizations to perform public service and the other persons who perform public service according to law shall all be regarded as state functionaries.



In a Reply to a request for guidance from the Liaoning Higher People's Court, the Supreme People's Procuracy (SPP) has characterized such policemen as state functionaries, rather than private employers:

In accordance with the provisions as set forth in para. 2, Article 93 of the Criminal Law, a contracted policeman, during the course of performing public service, shall fall within the scope of 'other persons who perform public service according to law'; therefore, she or he shall be regarded as a state functionary. If a contracted policeman neglects her or his duty in performing public service, and such act meets the constitutive conditions as specified in Article 397 of the Criminal Law, the offender shall be prosecuted for criminal liability for crime of neglect of duty. (Supreme People's Procuracy 2000)

The more contractualized approach to policing that increasingly prevails has sometimes taken the police over the boundary of legality, so that police conduct strays into the field of corruption and related forms of unlawful activity (Fu and Choy 2004). In addition to prostitution, gambling is a valuable source of revenue for fines, and both can provide lucrative opportunities for corruption through more direct participation. Karaoke bars are also said to be money-spinning investments in which the police have involved themselves. One of the easiest forms of such involvement is simply by offering protection 'services'.

In 2009, the extent to which such involvement could come to dominate a local police force came to light in the vast inland metropolis of Chongqing. Huang Guobi, whose husband had been dismembered by gangsters who also beat her, had found that the local police station was run by the gang-leader's nephew and that the corruption reached higher levels. However, she persevered, resulting in China's largest-ever criminal investigation. According to one of her supporters:

In fact, the police stations in Chongqing were actually the centre of the prostitution, gambling and drugs rackets... They would detain gangsters from time to time, and sometimes send them to prison, but the gangsters described it as going away for a holiday. The police and the mafia were buddies. (Liu Liangli, quoted in Moore 2009)

Thousands of gangsters were arrested, including a former deputy police commissioner and the head of the city's Justice bureau, and up to a fifth of the local police force were dismissed. The trials are continuing, with at least one convicted defendant executed to date. Official websites appear to publish only the bare details of the cases and the manner in which they are being handled.

### **Relations with other Law Enforcement Agencies**

But, in addition, the dominant power of the police has often also been a source of tension in working relations with other law enforcement agencies concerned with the administration of justice and the national security system, and these difficulties too need to be examined in order to understand fully the changing role of policing in the PRC. Particular attention is therefore given below to relations between not

only the CCP (and by extension, local government) but also the police and the procuracy, and the police and the courts.

In looking at relations between the police and other law enforcement agencies and groups such as lawyers, the fundamental importance of the police-CCP relationship, and the changes to that relationship, are a necessary starting point. In the PRC, the police are a much politicized control agency of the Party, and operate under the 'absolute leadership' of the CCP (Fu 1994; 2005: 243). As a result, although the legal reform process of the post-Mao period has accorded the police some degree of professional autonomy, the public security forces continue to be subservient to the Party. This control is imposed in a variety of ways. For one thing, there is the continued dependence on the strike hard campaign approach for dealing with serious crime and social unrest, which significantly undermines the drive towards professionalization. Relied on most recently to deal with unrest in Tibet and Xinjiang, this approach contains pressures to ignore procedural safeguards in the pursuit of 'substantive results'. For another, the appointment of key police officers remains a matter for the CCP, as indeed are the policies and goals of the police force as a whole. The police continue to be answerable to the local CCP Committees. The latter appoint and remove officers. Moreover, the localized nature of much police organization and work allows Party domination indirectly. The local government funds the police, but these local authorities are of course themselves accountable to CCP committees at the local level. As a result, the implementation of policies emanating from the central leadership very much depends on the *local* Party leadership. So even though the MPS exercises 'unified leadership' over police work, local Party committees have a great deal of discretion in interpreting and implementing policy within the area under their jurisdiction. In addition, even though the People's Armed Police Force (PAPF) anti-riot forces are under the joint command of the Public Security authorities and the Central Military Commission, it is clear that local Party Committees and governments often utilize, on their own initiative, PAPF units in their own territories.

In some ways, though, as a result of the process of police reform, the position of the police *has* been altered. First, the privileged tie with the CCP is now somewhat less advantaged than it once was. Secondly, the police are now one institutional actor among several. The other actors, most notably the courts and the procuracy, are growing in stature, albeit rather shakily sometimes. In a more rule-orientated system, the police have to compete and negotiate with other agencies within government for resources. This does not mean to say that the police will fail in such negotiation. For example, the provisions in the Criminal Procedure Law 1996 implicitly incorporating the Detention for Investigation were in fact the direct result of police lobbying in the course of the drafting process – initial drafts were not nearly so generous to the police on the question of detention time-limits (Biddulph 2005).

In keeping with the organizational control structures that are imposed on other state institutions, the Party leadership from very early on applied a dual system of 'vertical-professional' control by superior level public security organs on the one hand, and, on the other, local party and governmental organ horizontal control. As a result, the local police have two leaderships – professional control by a superior level police organ, and political and administrative control by local leaderships of the Party and the executive. This is seen as a Chinese characteristic that modifies

an institution – public security – transplanted from the USSR (Tanner and Green 2007: 650). It is a system that is also applied to the courts and to the procuracy. And it means that the organizational, personnel and financial power over policing is such that it is more in the interests of local police forces to adhere to the comments and suggestions of local Party and state officials than it is to follow the command and policies of superior levels of the police. Indeed, the basic manner in which the system of Party leadership controls the police has taken the form of *local* Party committee leadership, unlike the PLA, where vertical leadership principles have dominated. This authority and accountability pattern is buttressed by funding arrangements. A series of attempts by the MPS and the Ministry of Finance to channel financial support through vertical channels has been made, but the system of same-level government funding continues despite such efforts at change.

So, professional accountability in police work is significantly undermined by the historically institutionalized exercise of local Party power over the police. This has clearly negative implications for an attainment of a properly professional police force that would contribute to the development of the rule of law in China.

The police do remain a significant buttress of the Party's domination of state power. One of the most concrete manifestations of this buttressing has been the idea that the police would not aim their investigatory work at Party members, so that the practice of shielding party leaders from many police investigations has continued. It is thought that the Chongqing corruption case noted above only came to light as a result of political infighting within the Party. But, in return for its benign treatment, the police enjoy a disproportionate amount of decision-making members within the CCP, and heightened influence in the 'Judicial and Police System' (*sifa gong'an xitong*: 司法公安系统). From the Minister of Public Security downwards, the head of the police is one of the principal leaders in the system, so that:

the head of the public security bureau is generally at the same time a member of the Standing Committee of the Party Committee or the secretary of the Political-Legal Committee. This leads to the universal phenomena of police power being higher than judicial power. (He 2007: 672)

In any jurisdiction, monitoring police work at the local level is difficult, especially as there are many ways of preventing the superior or external bodies from acquiring the relevant information. As a result, and as Tanner and Green (2007) have emphasized, the reporting of crime is an art-form in many jurisdictions but one which is particularly nuanced in the Chinese context. The introduction of responsibility systems to improve accountability and performance on the part of the police has actually encouraged a significant under-reporting of crime, as one might expect from an examination of the use in socialist systems of success indicators to measure output and other aspects of performance. Under-reporting of crime has been a local response to the imposition from above of excessively high quotas for clearing up crime combined with financial disincentives for failing to meet quotas, for under-reporting enables local police to meet current targets and to keep future targets more manageable (Dutton 2000).

Another key problem exacerbated by the failure of the system of superior level professional control has been the lingering practice of torture. At the end of 2005, the UN Special Rapporteur on Torture made an official visit to the PRC. In order to

assess the prevailing situation regarding torture and other possible forms of cruel, inhuman or degrading treatment or punishment, he visited detention centres, Re-education Through Labour facilities and prisons in different areas of the country. His Report concludes that overall torture is in decline, especially in urban areas. There is also some improvement in that torture is no more a taboo subject for discussion. Thus, in contrast to several years ago, the Government is more prepared to acknowledge the pervasiveness of torture practices within the criminal justice system and is making efforts at both the central and local levels to combat torture and ill-treatment. However, the use of torture by the police at the pre-trial stage of the criminal process remains widespread, especially in rural areas.

As a result of the formal recognition of the problem of torture, in the last few years the MPS, the SPP and the SPC have undertaken measures in order to eliminate torture from criminal proceedings and to curb officials' abuse of power. In 2003, the MPS issued specific rules ('Regulations on the Procedures for Handling Administrative Cases')<sup>27</sup> which stipulate the legal processes by means of which public security organs should gather evidence and lay down the time limits for investigation and examination of suspects. Since the early 1990s regulations have been issued by the MPS which explicitly prohibit extortion of confession through torture,<sup>28</sup> and these have been reinforced from time to time. In addition, since March 2006, China's procurators have dispatched all over the country special audio and video recorders in order to record interrogations of criminal suspects in order to prevent torture (the manner in which these new technologies are effectively used in practice, however, is a different issue!). Particularly interesting are the local attempts to criminalize extortion of confession through torture which have started to emerge since 2000 in different provinces (Yunnan, Zhejiang, Sichuan, Hebei, Hubei, and Gansu).

As noted by Manfred Nowak, the UN Special Rapporteur on Torture, the recent issuing of a quite conspicuous number of opinions and regulations prohibiting the extortion of confession through torture has to be seen as the result of 'the growing willingness of officials and scholars to acknowledge China's torture problem' (UN Commission on Human Rights 2006: para. 46). Notwithstanding these improvements in discourse, however, there is a continuing reliance on torture. As we have noted, the problem is more serious in rural areas, where local authorities are difficult to control. The reasons for the persistence of this malpractice are also to be found in the absence of a rigorously restrictive legal framework. First, China still lacks a proper code of criminal evidence. Even though PRC law codifies the prohibition of torture (Art. 247-248 Criminal Law; Art. 43 Criminal Procedure Law),<sup>29</sup> it did not actually express itself on the use of confession extracted through

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<sup>27</sup> *Gong'an Jiguan Banli Xingzheng Anjian Chengxu Guiding*: 公安机关办理行政案件程序规定. These were revised and reissued in 2006 in order to take into account various changes introduced by the 2005 Law on Administrative Penalties for Public Security.

<sup>28</sup> See: 1992 Ministry of Public Security Decision on Firmly Curbing Extraction of Confession through Torture by the Public Security Police 1992 *Gong'an Bu Guanyu Jianjue Zhizhi Gong'an Ganjing Xingxun Bigong de Jueding*: 公安部关于坚决制止公安干警刑讯逼供的决定.

<sup>29</sup> And since the early 1990s there have been specific prohibitions on such misconduct: see, for example, the 1992 Ministry of Public Security Decision on Firmly Curbing Extraction of

torture as evidence before the courts until relatively recently.<sup>30</sup> Moreover, suspects are sometimes held in pre-trial detention for long periods of time without legal representation and judicial control. Thirdly, neither the presumption of innocence, nor the right to silence nor the right against self-incrimination are meaningfully guaranteed by PRC legislation. Article 12 of the CPL only vaguely alludes to the principle of presumption of innocence: ‘no person shall be found guilty without being judged as such by a People’s Court according to law.’ Moreover, Article 93 of the Criminal Procedure Law seems to run counter to these principles by saying that during interrogation a criminal suspect ‘shall answer the interrogators’ question truthfully’ even though ‘he shall have the right to refuse to answer any questions that are irrelevant to the case.’ Fourthly, interrogators in criminal detention centres are often poorly trained, have a limited knowledge of the law and still cling to the old ideal that the best mode of proof is oral confession. In addition, they are often under pressure to secure a conviction. Finally, the situation is made worse by the absence of autonomous social and political institutions checking the system – there are no free and critical mass-media, independent human rights monitoring organizations, independent commission monitoring of places of detention, and so on.

Despite the improved efforts to deal with the torture problem, the UN CAT has recently concluded and recommended as follows:

**Widespread torture and ill-treatment and insufficient safeguards during detention**

11. Notwithstanding the State party’s efforts to address the practice of torture and related problems in the criminal justice system, the Committee remains deeply concerned about the continued allegations, corroborated by numerous Chinese legal sources, of routine and widespread use of torture and ill-treatment of suspects in police custody, especially to extract confessions or information to be used in criminal proceedings. Furthermore, the Committee notes with concern the lack of legal safeguards for detainees, including:

- (a) Failure to bring detainees promptly before a judge, thus keeping them in prolonged police detention without charge for up to 37 days or in some cases for longer periods;

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Confession through Torture by the Public Security Police 1992 *Gong’an Bu Guanyu Jianjue Zhizhi Gong’an Ganjing Xingxun Bigong de Jueding*: 公安部关于坚决制止公安干警刑讯逼供的决定. Note also: 2001 Supreme People’s Procuracy Notice on Strictly Curbing Statements by Suspects Secured by Confession through Torture as a Basis for Case Verdicts (*Zuigao Renmin Jianchayuan Guanyu Yanjin jiang xingxun bigong huoqu de fanzui xianyiren gongshu zuowei ding’an yiju de tongzhi*: 最高人民检察院关于严禁将刑讯逼供获取的犯罪嫌疑人供述作为定案依据的通知).

<sup>30</sup> Thus, the use of evidence obtained by torture is now specifically banned by Article 26 of the 2003 Public Security Ministry, Provisions on the Procedures for Public Security Police Handling of Handling Administrative Cases (*Gong’an Bu Gong’an Jiguan Banli Xingzheng Anjian Chengxu Guiding*: 公安部 公安机关办理行政案件程序规定).

- (b) Absence of systematic registration of all detainees and failure to keep records of all periods of pre-trial detention;
- (c) Restricted access to lawyers and independent doctors and failure to notify detainees of their rights at the time of detention, including their rights to contact family members;
- (d) Continued reliance on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill-treatment of suspects, as in the case of Yang Chunlin. Furthermore, while the Committee appreciates that the Supreme Court has issued several decisions to prevent the use of confessions obtained under torture as evidence before the courts, Chinese Criminal procedure law still does not contain an explicit prohibition of such practice, as required by article 15 of the Convention;
- (e) The lack of an effective independent monitoring mechanism on the situation of detainees.

As a matter of urgency, the State party should take immediate steps to prevent acts of torture and ill-treatment throughout the country.

As part of this, the State party should implement effective measures promptly to ensure that all detained suspects are afforded, in practice, all fundamental legal safeguards during their detention. These include, in particular, the right to have access to a lawyer and an independent medical examination, to notify a relative, and to be informed of their rights at the time of detention, including about the charges laid against them, as well as to appear before a judge within a time limit in accordance with international standards. The State party should also ensure that all suspects under criminal investigation are registered.

The State party should take the measures necessary to ensure that, both in legislation and in practice, statements that have been made under torture are not invoked as evidence in any proceedings, except against a person accused of torture, in accordance with the provisions of the Convention. The State party should review all cases in which persons were convicted on the basis of coerced confessions with a view to releasing those who were wrongly convicted.

The State party should establish consistent and comprehensive standards for independent monitoring mechanisms of all places of detention, ensuring that any body established, at the local or the national level, has a strong and impartial mandate and adequate resources.

(UN Committee Against Torture 2008: [from Articles 2, 11 and 15])

Nevertheless, it is also clear that for some commentators within China, the difficulties of the sort outlined above mean that the professionalization of the police force and police work has not gone far enough. It is argued that there needs to be a fundamental rethinking of the position of the police, and a clearer separation of the basic administrative task of maintaining public order and criminal investigations. The Chinese police station is an administrative institution responsible for maintaining public security. It is also an institution for investigating criminal offences. The combination of two different functions makes the supervision of policing power difficult. So, it is argued, there is a real need for greater functional specialization, with in effect 'community policing' and detective

and investigation work made less interdependent. Other, related, areas of necessary reform include a clearer linkage between authority and responsibility within the police, a clearer line to be drawn between public and private matters and less police involvement in the 'private', greater attention to the principle of 'due process' and more effective judicial control (*sifa shencha*: 司法审查) (Hu 2008).

The creation of meaningful and effective systems of procuratorial and court control of police conduct in the contemporary PRC is still, however, also hindered in a quite fundamental fashion by the political and legal framework within which the procuracy and the courts must operate. The Constitution (at Articles 126 and 131) and the relevant organic laws declare that the procuracy and the courts are to operate independently, without executive interference. However, the reality is that the basic principle of the political legal and police system is that dual leadership – with horizontal leadership taking priority, and the use of political-legal committees to guide the work of all three institutions (police, procuracy and the courts) – undermines such autonomy and protection from interference (He 2007: 672). Among other things, in this system financing and personnel decisions – including procurators' and judges' salaries and promotions – are controlled by the executive and ultimately the Standing Committee of the People's Congress at the same level. This encourages the problem of 'localism' (*difang zhuyi*: 地方主义) in what should otherwise be professional decision-making. As I have stressed, local government and people's congress leaders occupy important positions in local Party committees, thus providing a powerful process of decision-making in which local administrative bodies such as the police can influence or even impose outcomes in the procuracy and the courts in their dealings with the police. This danger is exacerbated by the fact that within the Party at any given level, the chief of the police usually enjoys a more authoritative position than the heads of either the procuracy or the courts. The entrenched authority enables the police to resist criticism and reform.

In a recent article, two critics point to problems embedded in the current prosecutor-police relations under the current system of criminal procedure. They assert that deficiencies in the Procuracy's supervision system mean that there is insufficient accountability in the management of the Public Security's criminal case register (filing a criminal case) and criminal investigation. More generally, the two processes of investigation (police) and prosecution (procuracy) are not linked up effectively, so that necessary cooperation between the procuracy and the police in the handling of cases is often lacking. In addition, the police see procuratorial checking negatively, as a form of control, and therefore defy it (Zhang and Fu 2009).

Economic change in China has led to the demise of the urban work unit and the extensive drift of country folk to the cities, resulting in the weakening of local community ties and, in their place, a world of market economy and contract. The police have consequently found themselves with a new impediment. For, now embedded in a more legalistic environment, their work has become further complicated by the need to deal with lawyers. The lawyers' system built up in the 1950s in the PRC had been abandoned in part because it had become too closely identified in the eyes of the Party with criminal defence. In the post-Mao period lawyers have been careful to reinforce the official view that their main task in the era of reform is to facilitate rapid economic development. Heroes of the economic

revolution, they have tended to concentrate their efforts in commercial and civil law, and to avoid confrontation with the authorities by engaging in criminal defence and administrative suits against the government, often preferring instead to solidify ties with officials and other crucial decision-makers to the extent that they have become known as the *guanxi xuejia* (关系学家) or 'connections experts'. To this form of 'self-censorship' was added the restrictive provisions of the 1979 Criminal Procedure Law, which allowed very little pre-trial contact between a lawyer and a defendant, and in practice often reduced the lawyer's role to one of securing a lenient sentence in return for confession. In addition, the lawyer was a 'state legal worker' under the provisions of the 1980 Provisional Regulations on Lawyers.<sup>31</sup> The 1996 Lawyers' Law<sup>32</sup> ostensibly enhanced the status of lawyers, and removed the 'state legal worker' characterization, and the 1996 Criminal Procedure Law gave defence counsel somewhat more effective rights of defence.

However, rather than marking out a definite improvement in access to criminal justice, the formal reforms have made the criminal process an arena of tension between the police and a growing class of criminal defenders. Indeed, the past decade has seen the emergence of the growing group of 'rights protecting' (*weiquan*: 维权) lawyer-activists, lawyers who pursue interests and concerns that are larger than those of their immediate clients who have retained their legal services. The Party, however, still wants to manage the privatized legal profession so as to buttress its own position. As a result, local authorities have sometimes been very aggressive against those who cross the line, sometimes arresting such cause lawyers, sometimes withdrawing their business licences so that they cannot practice, sometimes even going so far as to arrange for them to be beaten up by *agent provocateurs*. So, the difficulty the Chinese leadership faces in accepting a genuinely independent legal profession is another serious barrier to China's attainment of international rule of law and human rights standards in the area of policing.

Among the difficulties that are placed in the way of effective criminal defence are the provisions of the Criminal Law 1997 on the use of evidence. Article 305 provides that a lawyer who:

destroys, falsifies evidence, assist parties concerned in destroying, falsifying evidence, threatening, luring witnesses to contravene facts, change their testimony or make false testimony is to be sentenced to not more than three years of fixed-term imprisonment or criminal detention; when the circumstances are severe, to not less than three years and not more than seven years of fixed-term imprisonment.

In addition, Article 38 of the 1996 Criminal Procedure Law stipulates that:

Defence lawyers ... shall not help the criminal suspects or defendants to conceal, destroy or falsify evidence or to tally their confessions, and shall not intimidate or

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<sup>31</sup> *Zhonghua Renmin Gongheguo Lushi Zanxing Tiaoli*: 中华人民共和国律师暂行条例.

<sup>32</sup> Lawyers' Law of the People's Republic of China, issued on 15 May 1996 to take effect on 1 January 1997, amended on 28 October 2007 and effective on 1 June 2008 (*Zhonghua Renmin Gongheguo Lushi Fa*: 中华人民共和国律师法).



induce the witnesses to modify their testimony or give false testimony or conduct other acts to interfere with the proceedings of the judicial organs.

Further, the Lawyers' Law 1996, Article 35 declares that:

A lawyer shall not commit any of the following acts in his practice activities:

- (6) provide false evidence, conceal facts or intimidate or induce another with promise of gain to provide false evidence, conceal facts, or obstruct the opposing party's lawful obtaining of evidence; or ...
- (8) disrupt the order of a court or an arbitration tribunal, or interfere with the normal conduct of litigation or arbitration activities.

These provisions make it sometimes very difficult for defence lawyers to work properly on behalf of their clients, and in an important recent analysis of their situation Fu Hualing has concluded:

Lawyers are intimidated and prosecuted [in China today] because they have become more proactive, aggressive and innovative in defending their clients' and their own rights, posing legal challenges that the prosecution has never encountered before. This challenge is possible because criminal justice in the past ten years has created opportunities and incentives for a growing legal profession. Thus, the predicament of lawyers today should be examined in the context of a profession in transition. (Fu 2007: 96)

### **Accessing Administrative Justice: Complaining about Police Conduct**

As part of efforts to make the police a more accountable body, space within the Chinese legal system has been made for citizen complaints alleging police wrongdoing that has violated the rights of the accuser. Various systems have been put in place with the ostensible goal of facilitating and handling appropriately such grievances. However, the lack of overall effectiveness of access to justice in respect of police misconduct is a matter which worries the central leadership in China.

A general, structural problem is that complaining against the executive lacks genuine, firm roots either in traditional Chinese legal culture or in the principles of the peoples' democratic dictatorship, and is therefore not welcomed by local authorities. And, such forces have the power to resist complaints even where made lawfully. The CCP's Director of the Central Committee for the Comprehensive Management of Public Security, Luo Gan, acknowledged this point, albeit with somewhat ambiguous conclusions, in a speech on the growing problem of civil unrest in the Chinese countryside. According to a 2007 report from *Xinhua*:

China's top security official ordered authorities of various levels to dissolve social conflicts and meanwhile, continue to crackdown on crimes to ensure that the Communist Party's 17th National Congress is held in a peaceful environment.

Luo Gan, director of the Central Committee for the Comprehensive Management of Public Security, urged local Party and government officials to do more mediation in dealing with social disputes or conflicts.

'Reasoning, consultation and negotiation should be applied in a comprehensive way to dissolve social conflicts,' said Luo... Luo asked local officials to listen to and work on the complaints and pleas raised by the masses 'to ensure their problems can be effectively resolved'. (*Xinhua* 2007)

While mediation may indeed be a better way forward in many cases, as suggested by Mr Luo, what it actually means in practice is not altogether clear, and the simultaneous emphasis on 'cracking down' on crime is strongly reminiscent of Mao's approach for dealing with different types of contradiction: antagonistic and non-antagonistic (see Mao 1957).

Three avenues of complaint in cases of alleged police misconduct are considered here: letters and visits (*xinfang*: 信访), administrative review (*xingzheng fuyi*: 行政复议), and administrative litigation (*xingzheng susong*: 行政诉讼). The first two of these processes are essentially 'in-house' systems for dealing with complaints lodged by Chinese citizens. They are seen as alternatives to administrative litigation, and as more consensual avenues to administrative justice than judicial review and similar types of litigation. Although I do not as yet have materials on the precise manner in which 'letters and visits' and 'administrative review' are currently functioning as avenues of justice in the instances of complaints against the police, some general observations are possible. These suggest that there may be room for improvement, and that both systems are undergoing change.

Thus, the Letters and Visits system enables citizens who disagree with administrative decisions to lodge a complaint with a special office established to handle such matters within the relevant administrative body (see, for example, Minzner 2006). This mode of complaining is low-cost, non-confrontational, and growing in importance. Its popularity reflects in part the continued belief that, as in imperial China, officials bear a quasi-parental moral duty to correct bureaucratic wrongdoing and errors. The system has also been utilized by country folk who, in the past ten years or so, have become increasingly restless, largely as a result of often-unlawful confiscation of their land for construction and other developmental projects. Inadequate compensation and subsequent environmental degradation often present significant additional complications. The attempt by rural folk to bring complaints against the authorities under this system has been met with local official resistance: complainants have been unlawfully detained, assaulted or even subjected to torture. As a result, rural protests have proliferated.

In reaction to these developments, there have been several important changes. First, the regulations governing Letters and Visits have been revised in an effort to make them more effective (see Palmer 2007b).<sup>33</sup> Second, new police units have been established in order to suppress more serious cases of unrest (MacCartney 2005). There is also anecdotal evidence that local government is prepared to go further, and to use *agent provocateurs* and criminal gangs in order to suppress local complaints about administrative misconduct at the local level. But in addition

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<sup>33</sup> 2005 *Guowuyuan Xinfang Tiaoli*: 国务院信访条例.

to these developments, which I describe in greater detail elsewhere (Palmer 2007a), a new policy has been introduced specifically intended to draw together citizen and State by the creation of Letters and Visits Mediation Sub-Centres (*Xinfang Tiaojie Fen Zhongxin*: 信访调解分中心). These centres use experienced community mediators to handle the increasingly difficult State-citizen 'contradictions' and to release the growing tensions (*bjcs.gov.cn* 2005-2006).

The important process of Administrative Review (also sometimes referred to in English as Administrative Reconsideration) permits an aggrieved citizen to challenge an unsatisfactory decision by filing an application for review at the next superior level within the same branch of government. Some 25 per cent of all administrative review cases dealt with over the past ten years or so concern allegations of police misconduct. In theory, this process encourages informed decision-making in respect of difficult issues, and enables the administration to understand better the workings and problems of subordinates. For the complainant, the system is relatively quick and less confrontational than litigation. The scope of reconsideration is also very broad, for the superior level may review both the legality and the propriety of particular administrative conduct, including an abstract act.

In contrast to the system of administrative litigation, Administrative Reconsideration allows for the use of mediation as a decision-making process. Most hearings are conducted on the basis of the complaint file, as the Law stipulates at Article 22 that 'in principle, administrative reconsideration shall take the form of written examination.' This position was recently confirmed in a clarification of the issue by the State Council. The Law provides much space for negotiating and mediating a compromise between the complaint and the administrative body that made the decision about which a complaint has been lodged. If a party disagrees with an attempted mediation then she or he may bring suit in a people's court.<sup>34</sup> As in the system of Letters and Visits, increasing encouragement is being given to use of mediation in administrative review cases, as part of the Party-state's efforts to make the system more effective and to help China create a more stable and harmonious society (Chu 2006). Overall, however, the administrative review regime for responding to complaints from citizens is limited in effectiveness by the difficulties created by the political environment in which it has to operate. Thus, there is an apparent lack of independence in the process of reconsideration and an increasing awareness that superior levels are inclined to defend what they see as the interests of the agency rather the person who has brought the complaint. The issue of administrative review in relation to the powers of the police is sufficiently sensitive for special rules to be introduced

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<sup>34</sup> The precise wording of the relevant article – that is Article 8 – in the 1999 Administrative Review Law (*Zhonghua Renmin Gongheguo Xingzheng Fuyi Fa*: 中华人民共和国行政复议法) indicates that mediation is extensively relied upon where there is a 'civil dispute' between the parties. In practice, however, negotiation and mediation are extensively relied upon to deal with administrative issues. Specific encouragement of mediation in administrative review decision-making, and recognition of resulting mediation agreements as legally binding, are now provided in Article 50 of the 2007 Regulations of the PRC on Implementing the Administrative Review Law (*Zhonghua Renmin Gongheguo Xingzheng Fuyi Fa Shishi Tiaoli*: 中华人民共和国行政复议法实施条例).

several years ago: the 2003 Provisions on the Procedures for the Handling of Administrative Review Cases by Public Security Organs. These were then revised in 2006.

Thus, in China – as in many other jurisdictions around the world – there are well-established alternatives to the courts for seeking administrative justice. It is clear, however, that such alternatives contain inherent limitations in the PRC, and that for the ordinary Chinese citizen this means that the courts and their powers of adjudication may sometimes seem to be the most effective way forward. My understanding is that approximately one-fifth of all administrative cases in China over the past decade so involved the police or a Re-education Through Labour committee as a defendant.

It was partly with the difficulties of citizen suits against the police that in 1989, when the Administrative Litigation Law was introduced, the use of mediation (*tiaojie*: 调解) was specifically banned as mode of decision-making in determining the substantive issues in a complaint, although its use by the administrative chambers of the courts was (and is) permitted for dealing with compensation awards. As one informant explained to me: if a public security officer has hit me on the nose unlawfully, what is there to mediate? Either the police officer hit me, or she or he did not. I have elsewhere (Palmer 2007a; Palmer 2009) demonstrated in some detail not only the basic limitations in that Law in holding government officials, including police officers, to account but also explored the manner in which judicial practice has undermined the prohibition on mediation that was at the heart of the Administrative Litigation Law. There have been many complaints that such unofficial mediation may be processually flawed, especially in Basic Level People's Courts where the parties are less likely to be legally represented. Outcomes are achieved by the judge applying pressure or even coercion, using legally inappropriate trade-offs, or simply procrastinating until the plaintiff withdraws. The plaintiff may also suffer from informal bullying, which the court is unable to eliminate, from the defendant state organ, designed to force the plaintiff to mediate and to settle on adverse terms. One recent investigation, which examined nearly 200 cases, found that only in one out of every five cases did the plaintiff consensually withdraw. In all the remaining cases, a degree of coercion 'encouraged' withdrawal of the complaint (Wang and Wang 2005). Nevertheless, early in 2008, the Supreme People's Court gave the practice informal recognition, introducing new rules of court which implicitly acknowledge that one of the outcomes in administrative cases is often a mediated settlement.<sup>35</sup> In these new

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<sup>35</sup> *Zuigao Renmin Fayuan Guanyu Xingzheng Susong Chesu Ruogan Wenti de Guiding*: 最高人民法院关于行政诉讼撤诉若干问题的规定 [Supreme People's Court Rules Concerning Several Problems in the Withdrawal of Administrative Suits], approved by the 1441st Meeting of the Adjudication Committee of the Supreme People's Court, promulgated on 1 January 2008, and in force 1 February 2008. Available at [http://news.xinhuanet.com/legal/2008-01/16/content\\_7432440.htm](http://news.xinhuanet.com/legal/2008-01/16/content_7432440.htm). See also 'Guanyu renzhen guanche zhixing 'Zuigao Renmin Fayuan Xingzheng Susong Chesu Ruogan Wenti de Guiding' de Tongzhi': 关于认真贯彻执行'最高人民法院关于行政诉讼撤诉若干问题的规定'的通知 [Notice on Seriously Carrying Out the 'Supreme People's Court Rules Concerning Several Problems in the Withdrawal of Administrative Suits'], *Zuigao Renmin Fayuan Gongbao* [Gazette of the Supreme People's Court], No. 1 for 2008, pp.19-20.

rules, the term ‘mediation’ (*tiaojie*) is not used: instead, the Court uses the expression ‘settlement’ (*hejie*: 和解) and assumes that in many instances the settlement will have been achieved by active mediation by the main trial judge.

### **The People’s Armed Police Force**

As we indicated earlier, in addition to the many kinds of civil police found in China today, there exists an increasingly powerful force: the People’s Armed Police (*renmin wuzhuang jingcha*: 人民武装警察). Although the system of police ranks has been applied to the armed police, this force falls under the leadership of both the State Council and the Central Military Commission in a combined system of ‘unified leadership and hierarchical command’ (*tongyi lingdao yu fenji zhihui xiang jiehe*: 统一领导与分级指挥相结合) (Law on the People’s Armed Police 2009, Article 3). As a result, it is difficult to see how the People’s Armed Police will escape the tension between vertical professional control and local government and party influence that has caused so many problems for the civil police, especially as much of the funding for the personnel and operations of the force comes from local government.

The People’s Armed Police Force (PAPF) is responsible, *inter alia*, for the suppression of disorder (Articles 1 and 7 of the Law on the People’s Armed Police Force 2009). Its methods of suppression, according to the 2009 Law, may include ‘taking necessary measures (*biyao cuoshi*: 必要措施) to stop or disperse assemblies of people who threaten social order’, and this gives the armed police very broad, coercive powers. These powers have been used very recently to control unrest in China’s western, inland regions. There have been many complaints in recent years that local governments rely on the People’s Armed Police for inappropriate purposes, including tax collections, fines, arrears, and disputes over land ownership. It seems from the new law that the avenues for securing redress against this malpractice are limited:

Article 30: The people’s armed police shall, in the execution of missions, accept the supervision of the people’s governments and relevant departments thereof, citizens, legal persons and other organizations.

Any citizen, legal person or other organization shall have the right to report or complain about violations of laws and disciplines by the people’s armed policeman to the people’s government at or above the county level and the relevant department thereof or the People’s Armed Police Force.

Article 31: Where the people’s government at or above the county level or the relevant department thereof receives any report or complaint from a citizen, a legal person or any other organization about any violation of laws or disciplines by any people’s armed policeman or finds that any people’s armed policeman violates a law or disciplines in executing a mission, it shall notify the PAPF in a timely manner.

Article 32: The PAPF shall, after receiving a report or complaint from a citizen, a legal person or any other organization or after being notified by the

people's government at or above the county level or the relevant department thereof about any people's armed policeman's violation of law or disciplines, investigate and punish the violation in a timely manner.

Article 33: The PAPF shall conduct supervisory inspections on the implementation of laws and administrative regulations and compliance with discipline by the subordinate people's armed police.

Given the wide ranging powers of the People's Armed Police Force, the systems of leadership and finance that have been put into place, and the emphasis in the complaints and grievance systems on administrative processes managed by local governments, it is hard to escape the conclusion that the People's Armed Police Force will persist as a difficult 'rule of law' issue in the years to come. Or, as two commentators recently advised in rather modest terms: 'PAP leaders ought to pay more attention to the legitimacy and accountability of the institution' (Sun and Wu 2009: 126).

### **Reflections**

Some thirty years after a process of reform and engagement with the outside world was initiated, and ten years after a constitutional amendment committing the Chinese leadership to 'governance in accordance with the rule of law', the People's Republic of China continues to be governed by a political and legal system in which the Communist Party occupies a leading and dominant position. The police remain key instruments of support for the maintenance of this supremacy. This helps to explain why the police continue to play such a critically important role in state-society relations, albeit in some very significantly changed ways. Key aspects of this power is the continuing use of administrative – rather than judicially-based – forms of punishment (including the RTL) 'labour camps', 'strike-hard' campaigns against serious crime and social disorder, and the comprehensive management of public order.

And while the legal framework within which the police operate may have become more formal and regular over the past thirty years, with accompanying professionalization, autonomy and procedural justice in the criminal process (together with greater public awareness of the rights of the individual), the impact of this framework has not necessarily been to reduce police power. Indeed, changes in the position of the police have probably been more a function of the socio-economic changes within which the police operate rather than the framework itself. Many of the changes – especially the negative developments in policing – are the unintended and unanticipated consequences of the reform efforts. The contractualization of police work has had manifold consequences. Much of this difficulty too has to do with local resistance to well-intentioned reform efforts. The rise of the PAPF, with its quasi-military ethos, is another particularly important development, but one which may be seen as an intensification of the old 'strike-hard' approaches to difficult problems of order maintenance rather than a move away from such an ethos. Indeed, it seems that the police in China, considered overall, are not only the site of struggles between long-established and well-

entrenched thinking that sees the police as a key element in the maintenance of the people's democratic dictatorship (and its control of civil society), and a more professional police orientation. The police are also sandwiched between conflicting pressures emanating from between central government and local government. Policing development is also increasingly complicated by the fact that it has also become the site for at least three different and to some extent competing ideologies: those of state and state-sponsored violence, harmonious society, and governance according to the rule of law.

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