

REGULATING DRUG DEPENDENCY IN CHINA

The 2008 PRC Drug Prohibition Law

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This paper examines the reforms to powers of Chinese state agencies to deal with drug-dependent people introduced by the PRC Drug Prohibition Law 2008. Whilst professing to take a more humane approach to problems of drug dependency, the law retains a police-centred approach to regulation. The law provides for a set of interconnected police powers that include: registration; imposition of a three year term of community rehabilitation; administrative detention for two years; and the possibility of a further supervised rehabilitation order upon release. In the absence of detailed implementing regulations, this paper examines the different ways local agencies are interpreting and implementing these powers.

Keywords: China, police, drug dependency, detention

Introduction

China has a complex and ever-expanding problem with drug abuse and drug-related crime. One of the early tasks of the Communist Party of China ('CPC') when it assumed unified political power in 1949 was to act decisively to eradicate the widespread problem of opium manufacture, trafficking and dependency. Within a few years, the authorities proudly proclaimed China to be drug-free (Biddulph 2007: 76–81; Ma 1993). However, regardless of whether this problem was in fact ever completely resolved, from the late 1970s, the authorities were forced to confront the re-emergence of serious problems of expanding manufacture, trafficking and use of illicit drugs.¹ The history of widespread opium addiction in China forms part of the historical narrative of national weakness and humiliation against which the current rise of China is juxtaposed (Baumler 2007). An important aspect of that narrative is the central role of the CPC in constructing a socialist political and social order that had effectively dealt with the legacy of 'social evils' of the Republican and imperial era. The re-emergence of drug use and dependency is an affront to this new social order and to its socialist, ethical basis. Problems of drug production, trafficking and use are thus invested with a degree of political significance and sensitivity, which has made the difficulty in containing this new wave of drug trafficking and use particularly galling for state authorities.

The Chinese state has taken active steps to address the illicit drug problem. Since the beginning of the reform period, problems of drug use and dependency have been dealt with as a component of the broader programme for social management and the

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¹The term 'drugs' used in the law is defined in the same way as it is defined for the purposes of the criminal law and includes narcotic and psychotropic drugs, and other controlled substances. The PRC Criminal Law defines drugs at Art. 357 as referring to opium, heroin, ice, morphine, marijuana, cocaine and other addictive narcotics and drugs for mental sickness that are under the state's control.

maintenance of social order, the Comprehensive Management of Public Order ('CMPO'). Under this programme, those groups and individuals identified as posing a threat to social order and stability have been targeted for special management and surveillance. The techniques of control of drug users under the CMPO range from localized management through the registration of drug users by the local police, to administrative detention of drug-dependent people in either coercive drug rehabilitation centres, or re-education through labour (RETL) and, in cases of production and trafficking, criminal prosecution and imprisonment. These groups have also periodically been swept up in the targeted enforcement campaigns against crime that have been waged since the early 1980s (Biddulph 2007: 139–41). This regulatory model originally sought to replicate the idealized successes of the 1950s in abolishing drug trafficking and use. It placed primary responsibility for achieving it on the public security agencies (the police).

As China's drugs problem has intensified, the State Council in 1990 (the chief executive organ of state) established a specialized agency, the National Narcotics Control Commission ('NNCC'), to coordinate the work of different departments in conducting the state's war against drugs (Zhao and Yu 2000: 129; Chen *et al.* 2005: 370–1). It is led by the Narcotics Control Bureau, which was established within the Ministry of Public Security ('MPS') in 1998, institutionally entrenching the police at the centre of the nation's drug control policy. This police-centred approach to controlling drug use and dependency has come into increasingly sharp tension with the predominant view of international agencies such as United Nations Office on Drugs and Crime and the World Health Organization that drug dependency is a health problem that requires treatment, education and rehabilitation and not punishment (UNODC 2010: 43). There have been some signs that China may adjust its approach to problems of drug dependency in light of these views. In particular, China has recently embraced programmes to reduce the vulnerability of injecting drug users to HIV infection through the establishment of methadone maintenance treatment of opioid addiction ('MMT') programmes, needle exchange programmes and programmes to test and provide treatment for HIV/AIDS sufferers.² Passage of the PRC Drug Prohibition Law (the 'Law')³ in December 2007, the most recent legislative reform in the area of drug policy, provided an opportunity to further embrace a health-oriented approach to drug dependency.³

In fact, the Law does articulate the need for measures to be adopted to assist drug-dependent people with drug rehabilitation. The Law characterizes drug-dependent people as 'sick' and victims of their dependency, who should be treated with humanity (Qi 2008: 196–8). The Law gives some acknowledgement to and support for the state's HIV/AIDS and harm-reduction strategies now being implemented in various parts of the country. The Deputy Minister of Public Security, Zhang Xinfeng, claims that the Law embodies a more person-centred approach to addressing problems of drug dependency, and has taken a more multifaceted approach by introducing a range of

²According to one Xinhua report, 307 methadone clinics in two-thirds of China's provinces had been opened by 2007; Xinhua News Agency 2007.

³The term *du ?* is often translated as 'narcotic'. However, that translation has not been adopted in this paper, as the term relates to all illicit drugs, not merely narcotic drugs. The legislation has also been translated as the Narcotics Control Law; World Health Organization 2009: 12.

non-custodial treatment options including voluntary treatment and community rehabilitation orders, with the philosophy being that ‘education and treatment are even more necessary than punishment’ (Huang 2008: 246–50).

To what extent does the Law live up to this promise of a stronger emphasis on education and treatment? To explore these questions, in ‘Dealing with Use and Dependency under the Drug Prohibition Law’ below, we undertake a close examination of the reforms introduced by the Law in the treatment of drug-dependent people and local practice as it has developed. We demonstrate that, despite the gesture towards a health-oriented treatment approach, the Law retains and, if anything, expands the scope of administrative coercive powers exercised by the public security agencies and preserves the police-centred nature of China’s drug-treatment strategies.

The passage of the Law at this time also tells us something about the prospects for legal reforms of coercive powers more generally. The drafting of this legislation has taken place in the midst of a fierce legal debate about the lawfulness and appropriateness of pre-existing forms of administrative detention. Advocates of reform have argued that, if administrative detention powers are to be retained, they must at least include strong procedural safeguards and robust mechanisms for supervision of the exercise of administrative detention powers. Is the state willing to codify the better protection of rights of a group commonly viewed as a dangerous threat to the health of society at a time when the protection of social order and stability has become one of the state’s primary preoccupations? These questions are addressed in ‘Legal Issues’, below.

Background

The international context

In 2010, Antonio Maria Costa, the Executive Director of UNODC, affirmed the basic requirement of the UN Charter that responses to problems of drugs be dealt with in accordance with the rule of law and in conformity with respect for fundamental human rights and freedoms. This includes adherence to principles of proportionality, due process and non-discrimination against vulnerable groups in the implementation of drug laws, as well as protection against arbitrary detention and forced labour. The protection of the right to health, he continued, requires that drug dependency be treated as any other health issue, as it is a ‘multi factorial health disorder’ (Costa 2010: 10). Protection of the right to health includes the right to obtain medical treatment in detention facilities and the right to informed consent to medical treatment, which means that patients should not generally be forced to undergo treatment for drug dependence (Costa 2010: 10–11).

Framed thus, compulsory drug rehabilitation of the type practised in China has been criticized as offending against basic human rights norms, being arbitrary and punitive (Human Rights Watch 2010). It has also been criticized as being ineffective (World Health Organization 2009: 31). In both law and practice, many serious problems have been identified with the use of administrative detention for the treatment of drug dependence. Funding for detention centres has often been inadequate, affecting the extent to which rehabilitation services or medical treatment can be provided. In fact, in 2000, the MPS itself identified wide-ranging and severe abuses in coercive drug rehabilitation centres involving the frequent occurrence of serious ‘accidents’, some

detention centres not having personnel on duty at all times as a result of staff shortages, and people who should have been sent to coercive drug rehabilitation centres instead being placed in other, more punitive and less safe forms of police detention. (MPS *Notice on Putting in Order and Rectifying Coercive Drug Rehabilitation Centres*, 21 June 2000; Chen and Li 2005: 389). In all forms of drug detention, the law permits detainees to be 'organised to carry out an appropriate level of labour' (e.g. the State Council *Measures on Coercive Drug Rehabilitation* 1995, Art. 13). They are supposed to be paid for this work, but interviews conducted of prior detainees by Human Rights Watch indicate that work is not voluntary and people are not inevitably paid for the work they perform (Human Rights Watch 2010).

China's experience also bears out the doubts expressed over the effectiveness of detention as a means of curing addiction. For many drug-dependent people, detention becomes a revolving door, with estimates of relapse rates after release from detention of at least 85 per cent (Liu 2005). In recent years, there has been a growing realization that purely focusing on isolation might temporarily resolve the problem of physical addiction, but does not help with problems of reintegration into society, does not do anything to address the environmental factors surrounding addiction or help to mobilize family and community to assist with reintegration. International and domestic pressure for substantial reform of the existing system for treatment of drug dependency had been growing for some time. Possibly, one catalysing moment was the infamous case in 2003 of the death by starvation of the three-year-old daughter of Li Guifang. Li was detained when out shopping and placed in coercive drug rehabilitation. Her repeated requests for someone to collect her daughter, who was left at home alone, were ignored (Teng 2008: 167).

Despite these criticisms of the use of detention for drug rehabilitation, China is not alone in imposing administrative forms of detention for the compulsory treatment of drug-dependent people. A number of countries in the Asian region, including Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, Thailand and Viet Nam, also subject drug users to forms of compulsory treatment in detention (Mathers *et al.* 2010: 1024; Saucier *et al.* 2010). In other jurisdictions such as Russia, using proscribed drugs is a criminal offence and drug users are often detained in prison (Orlova 2009). Evidence compiled on the EU countries indicates that there are generally low rates of imprisonment of offenders for personal drug use, though the boundary with drug trafficking, for which terms of imprisonment are commonly imposed, varies between jurisdictions (EMCDDA 2009).

The domestic context

Whilst there is a strong appreciation in China of the limitations of detention as a way to rehabilitate drug-dependent people, the possibilities for reform are constrained within the parameters of criminal justice and social control policies and within existing institutional arrangements of power.

Between 1983 and 2008, a strong influence on the development of coercive models of drug rehabilitation was exerted by the 'Strike Hard' policy, which required imposition of severe and swift punishment against targeted criminal offences (Trevaskes 2010: 332). Under this policy, a series of campaigns and other concerted crack-downs were waged. Whilst this policy was primarily directed at criminal offending, the targets of campaigns

and other specialized struggles (*zhuanxiang douzheng*) were frequently expanded to include socially harmful conduct that was not classified as a criminal offence. An illustration was the 1989 crack-down on the ‘Six Evils’, the targets of which were prostitution, gambling, pornography, kidnapping and selling people, deceiving people with feudal superstition, and drug use (Biddulph 2007: 136–9). Under the influence of the Strike Hard policy, the number of administrative detention centres of all types expanded significantly throughout the 1980s and 1990s. In 2005, the NNCC launched a two-year ‘People’s War on Drugs’ to control drug supply, curb the influence of drug-related crime and halt the increase in drug addiction (Jiao 2008). However, neither this war nor the other specialized struggles against drug use have made a decisive impact on levels of drug use, with the MPS reporting that, at the end of June 2010, over 1.44 million people were on the police register of drug users (Xinhua Web 2010), up from 1.16 million in 2005.⁴

Reliable statistics on the number of drug detention centres and detainees are elusive, but the *State Council White Paper on Narcotics Control* released in 2000 gives an indication, stating that there were 746 coercive drug rehabilitation centres and 168 RETL camps, or teams, for drug-dependent people (State Council 2000). The 2008 Annual Report on Drug Control in China reported that, in 2007, 268,000 people were placed in coercive drug rehabilitation centres and 69,000 in RETL camps because of drug dependency (Office of the NNCC 2008: Section 4). Other accounts suggest that up to 500,000 people are detained for coercive drug treatment at any one time (IHRA 2011).

After the 16th CPC Congress in 2002, the CPC led by Hu Jintao and Wen Jiabao has adopted a number of interlinked policies seeking to rebalance the benefits of economic reform in society and to create a more harmonious and stable society. These policies have adjusted the discursive environment in which drug policies and practices are fixed. The broad ideological umbrella of the Scientific Concept of Development, articulated by Hu Jintao and endorsed by the Politburo in 2003, calls for a humane, ‘people-centred’ mode of governance that puts the interests of the people first (Fewsmith 2004: 3). One of its aims is to achieve a Harmonious Society—a policy that includes an emphasis on law-based governance, fairness and justice, stability and order. In terms of criminal justice policy, from the end of 2005, the emphasis on severe punishment under the Hard Strike policy has given way to adoption of a more balanced approach to punishment under the rubric of ‘Balancing Leniency and Severity’. This policy requires severe punishment of serious crime and crimes with exacerbating circumstances and lenient treatment of minor offences or offences with mitigating circumstances (Trevaskes 2010; Hu 2009: 75). As part of this programme of lenient punishment, there has been an expansion of the use of non-custodial punishments including community correction.

Elements of these reforms are reflected in the new Law, which adopts a rhetorical commitment to people-centred governance, to treating drug-dependent people humanely and expanding the use of voluntary and non-custodial treatment options

⁴Qi D (2008: 200) suggests that one of the successes of the people’s war on drugs was to reduce the number of heroin-injecting drug users (‘IDUs’) and the number of HIV infections from injecting drug use, stating that, in 2001, 67.7 per cent of IDUs had HIV and, in 2007, that proportion was 49 per cent. Other statistics from different sources support this claim, even though the precise numbers vary. The State Council’s *White Paper on Narcotics Control* asserted that, in 1999, 72.4 per cent of people infected with HIV acquired their infection from injecting drug use. Another group estimates that, up to 2009, injecting drug use accounts for 44 per cent of HIV infection in China: Anderson *et al.* (2009: 6).

for drug dependency. However, it is important not to lose sight of fact that the humane and people-centred governance envisaged by the Scientific Concept of Development and the Harmonious Society Policy contain within them an absolute demand for stability and social order. The problem of drugs is seen as one that seriously affects social order and stability, with drug use and crime, twins (Jiangsu Laojiao Ju 2008). The centrality of social order and stability within this policy universe is illustrated by the proliferation of ‘stability protection’ (*weiwen*) committees and the dramatic increase in the annual budget appropriation for stability maintenance in 2011, up 13.8 per cent from 2010 to overtake the defence budget (Lam 2011). It is also reflected in the continued priority given to a police-centred mode of regulation and preservation of detention as a key tool for treatment of drug dependency, discussed in the section below.

Dealing with Use and Dependency under the Drug Prohibition Law

Whilst the Law does permit a person to undergo voluntary drug rehabilitation without imposition of a penalty and provides for a wider range of non-custodial rehabilitation orders, the Law has not reduced the extent of the interlocking coercive powers of registration, surveillance and administrative detention of drug-dependent people. Indeed, under the new Law, a person may be subject to coercive drug rehabilitation orders, custodial and non-custodial, for a total of nine years.

The Law continues the pre-existing characterization of drug use and dependency as being unlawful, but not as constituting a criminal offence and so punishable by administrative, rather than criminal, sanction (Zhao and Yu 2000: 134; Xie 2000: 115–16). Punishment by way of fines and short periods of detention of people found in possession of small amounts of proscribed drugs or drug paraphernalia, or where a person is found to have used drugs, may be imposed under the Security Administrative Punishments Law (‘SAPL’). In addition, chapter 4 of the Law sets out a number of measures that may be taken to address drug use and dependency. These are: registration of drug users; voluntary treatment for addiction in treatment facilities; imposition of a period of ‘rehabilitation in the community’; imposition of a period of administrative detention in drug detoxification centres called Coercive Quarantine for Drug Rehabilitation (‘CQDR’); and post-release treatment under the power of ‘giving up drugs and recovering health’. As is the case with much Chinese legislation, the Law describes these measures in outline form only. In certain respects, the law is sufficiently vague that passage of further detailed regulations by the State Council and its ministries will be required to provide sufficient detail for the powers described in the Law to be given their final form. Work has been underway for some time on drafting these implementing regulations. The most important one, the Drug Rehabilitation Regulations, has been drafted by the MPS and provided to the Legal Affairs Office of the State Council for comment. After consultation with interested actors, this draft was amended and distributed for public comment by the Legal Affairs Office of the State Council on 25 June 2010 (reproduced at www.gov.cn/gzdt/2010-06/25/content_1636986.htm, accessed 19 May 2011). At the same time, and in the absence of centrally issued implementing regulations, local officials have implemented the powers described in the Law in a range of ways. This is an excellent illustration of the dynamic interaction between local practice and central rule making in China. In this case, localities have and continue to carry out formal and more informal trials both before and

after promulgation of the Law. These trials have fed into the processes both of drafting the Law and providing details for implementing this legislation. This section discusses a range of local implementing practices. In addition to publicly available information, the authors draw on interviews conducted in 2009 with officials responsible for implementation of aspects of the law and site visits in Beijing, Shenzhen, Kunming and Guangzhou.

Voluntary rehabilitation

The Law continues to allow drug addicts voluntarily to place themselves in an accredited treatment centre. The centres must be not for profit, must be authorized by the local government and be subject to supervision by the health department. A person voluntarily placing themselves in a treatment centre should not be punished for drug use or dependency, but they will be placed upon the police register (Art. 36). The Law adopts a zero-tolerance approach to using drugs during the period of treatment, as the treatment centre is obliged to report any drug use during the treatment period to the police (Art. 37). They will then be subject to a coercive treatment order. This zero-tolerance approach contrasts with more medically and public health-oriented models for addressing problems of drug dependency that emphasize harm reduction and seek to reduce drug use with a view finally to eliminating it.

Registration

Registration retains its pivotal role in identifying and supervising drug users, dependent people who remain in the community, imposing detention on dependent people and in their supervision post-release. A person determined by the police, justice departments or health department to be a drug user is to be put on a national register, the National Drug Prohibition Information System, maintained by the police (*MPS Measures on Registration of Drug Users*, 20 July 2009, Art. 3). Currently, the register is maintained centrally within the Narcotics Control Bureau of the MPS (*MPS Measures on Registration of Drug Users*, 20 July 2009, Art. 7). Despite the high number of people included in the register of 1.44 million in 2010, one estimate is that, for every person on the register, there are another ten drug users who are not (Qi 2008: 206). In addition, a person may voluntarily place him or herself on the register, in which case, the Law provides that they shall not suffer any punishment. (Law, Art. 62). They may then be permitted to register for MMT treatment at a local clinic.⁵

The register is designed as a mechanism to keep up-to-date information on drug users, with particular emphasis on the local management of people registered as drug addicts (*MPS Measures on Registration of Drug Users*, 20 July 2009, Art. 10). People on the register are subject to ongoing police supervision and periodic testing. The *MPS Provisions on Drug Testing Procedures* 2010, which took effect from 1 January 2010, now set out the procedures to be followed by the police in carrying out drug testing. Tests may be of urine, blood or hair.⁶ The Law authorizes the police to test people suspected of using

⁵See, e.g. Xinhua News Agency (2007) the deputy head of the Beijing Drug Control Committee stating that those drug addicts who register voluntarily with the police will be eligible for methadone treatment at clinics being built in Beijing.

⁶MPS Regulations on Drug Testing Procedures, Art. 6.

drugs and permits the police to test compulsorily if the person refuses to comply with a police directive to submit to testing (Art. 32; *MPS Regulations on Drug Testing Procedures*, Art. 7). Whilst the regulations require that the information on the register be kept up to date, there is no provision that enables a person to challenge their inclusion on the register, or to be removed from the register. A person may thus remain on the register indefinitely and be subject to ongoing random or periodic drug testing, regardless of whether they have successfully rehabilitated. People thus have a strong incentive to avoid having their name placed on the register if at all possible.

Community-based rehabilitation

One of the non-custodial drug-treatment orders introduced by the Law is supervised rehabilitation in the community ('Community Rehabilitation'), which may be imposed on a person determined by the police to be drug-dependent. The term of this form of rehabilitation is three years (Law, Art. 33). A person ordered to undergo Community Rehabilitation is required to sign an agreement with the local street or village committee, setting out the period of rehabilitation, specific drug rehabilitation measures to be undertaken, their responsibilities and the consequences for breaching the agreement (Art. 23). A zero-tolerance approach is also adopted towards compliance with the rehabilitation agreement, as a serious breach of its terms or any drug use is grounds for revocation of the Community Rehabilitation order and imposition of detention under CQDR (Law, Arts 35, 38; Drug Rehabilitation Regulations (Draft for Comment) ('Draft Regulations'), Art. 29). The Law anticipates that a person is to serve their Community Rehabilitation order in the place of their household registration or their permanent residential address under the supervision of either the local street committee in urban areas or the village government in rural areas (Art. 33). Such a provision excludes, and so effectively denies the possibility of, a non-custodial community rehabilitation order for the very large number of migrant workers who are living away from their permanent place of household registration and who do not have a permanent urban registration.

The Draft Regulations anticipate in very general terms the establishment at the local level of a Community Rehabilitation Small Working Group comprising local police officers and medical personnel, drug rehabilitation social workers, community volunteers and the guardian or family members of the person subject to the order. One of the critical issues that will determine the extent to which and the ways in which this form of community-based rehabilitation are given effect in practice is the viability of the local organization responsible for implementing the community rehabilitation order. Local street committees have undergone significant change from the pre-1976 revolutionary era, when they operated as voluntary grassroots organizations of mass mobilization. They are now being transformed as part of the state's policy of 'community building' as a cornerstone of local urban governance (Bray 2006). However, it is not apparent that these local community organizations have either the capacity or the will to supervise Community Rehabilitation orders that anticipate the provision of intensive supervision and support. Matters such as how such a community rehabilitation group is to be constituted, funded or function are not regulated and, for the time being at least, are to be determined by local governments.

To date, Community Rehabilitation programmes have been implemented in a variety of ways throughout the country. In some places, there is not an appropriate underlying community infrastructure in place to put Community Rehabilitation effectively into practice, leaving this aspect of the law a dead letter. In other areas, Community Rehabilitation is organized and led by the local police station with assistance of non-professional community volunteers. In other localities, social work professionals have been employed to carry out this work. In Shanghai, for example, liaison and support are provided to drug-dependent people primarily by a specialist team of social workers with the status of government employees (Office of the NNCC 2009: Section 4). This system predates the Law and was initially put in place in 2003 in order to remove some social functions from the police, because of the tense relationship that existed at that time between the police and citizens. Social workers perform a range of functions including staffing centres to provide support and education for drug users, providing individual case supervision for people undergoing Community Rehabilitation or after release from detention, and carrying out periodic urine testing of registered drug addicts—a role that the Law contemplates would otherwise be performed by the police (Wu and Peng 2010: 85–6). Some successes have been claimed and this model is being adopted in other cities such as Nanjing (Nanjing People's Government, *Implementing Opinion on Establishing a Full Time Drug Prohibition Social Work Team*, 20 February 2010, available online at www.jhak.com/flfg/xggd/2011-01/02/content_4753.html, accessed 20 May 2011). However, this model is costly and not all localities have adequate funding to implement it. If Community Rehabilitation is to become a viable way of assisting in the rehabilitation of drug-dependent people, the programme will require funding and the employment of specialist personnel, including social workers and case managers.

Coercive Quarantine for Drug Rehabilitation (CQDR)

Prior to the passage of the Law, drug-dependent people could be detained in either coercive drug rehabilitation centres operated by the police for between three and six months, with a possible extension up to one year, or in re-education through labour ('RETL') camps run by the justice department for between one and three years, with a possible extension of a further year.⁷ Whilst RETL was not originally intended for the treatment of drug dependency, from the 1990s, drug-dependent people who relapsed after release from coercive drug rehabilitation were increasingly detained within RETL camps: some in drug rehabilitation divisions within ordinary RETL camps and some in single-purpose RETL camps (Guo and Li 2000: 319–20; Chu 1996: 64–5; Zhao and Yu 2000: 141). The proportion of people in RETL as a result of drug dependence varies from province to province. In Guangdong, for example, between 80 and 90 per cent of the people held in RETL were reported to be there as a result of drug addiction (Li and Huang 2008: 82).

The Law supersedes and rescinds the 1990 *Decision on the Prohibition of Drugs*, which had provided the legislative authorization for both coercive drug rehabilitation and coercive

⁷Most recently set out in the MPS Regulations on Public Security Organs Handling Re-education through Labour Cases, 1 June 2002; see also a discussion of the scope of RETL in Fu (2005).

drug detention in RETL.⁸ The new detention power mandated in the Law, Coercive Quarantine for Drug Rehabilitation ('CQDR'), was designed to merge and replace the pre-existing detention powers of coercive drug rehabilitation and drug detention through RETL (Huang 2008; Yang and Zhang 2008)—a view reportedly supported by the CPC Central Committee as early as June 2006 (Re-education through Labour Bureau 2009: 51). Where a person is determined to be a drug addict and is not ordered or is ineligible to undergo rehabilitation in the community, or they breach the terms of their rehabilitation agreement, the police at county level or above may impose a term of CQDR (Law, Art. 38). CQDR is a form of administrative detention, as it is imposed by the police without a court decision, for an initial period of two years. In 2009, official statistics report that 173,000 people were sent to a term of CQDR (Office of the NNCC 2010: Section 4).

Whilst the Law empowers the police to make the decision to impose a term of detention in CQDR, it does not specify which agency, the police or the justice department, will be responsible for managing these detention centres. After passage of the Law, all centres for the detention of drug-dependent people were renamed.⁹ In some areas, such as Yunnan, the police took over responsibility for management of all CQDR centres. In Anhui, by contrast, management of CQDR was transferred to the justice departments. In the majority of areas, as typified by Guangdong, the police and justice departments each retained responsibility for management of the camps for which they originally had responsibility (Lin 2010). By rescinding the drug detention aspects of RETL, the Law required reorganization of RETL camps by removing those detained for drug dependency to CQDR camps. Where specialist drug-related RETL camps had been established, this reorganization required only a change of the name of the camp. In other RETL camps where drug-dependent people comprised only a portion of the camp population, reorganization was required, with those detained for drug dependency transferred to specialist drug detention centres.

The Draft Regulations, at Art. 37(2), propose a different type of division of labour between the police and justice-operated CQDR centres to that currently in place. That is, detainees will spend between the first three and six months of their period of detention in police-run CQDR and, after that, will be transferred to justice-operated CQDR centres. The Draft Regulations go on to provide that, in those districts in which conditions are not conducive to such a transfer taking place (such as resource constraints or limitation in the availability of space), the public security and justice agencies can obtain approval from the local government to delay transfer, but not for longer than six months.

At the end of the first year of detention, the Law provides that the detainee will undergo an evaluation to determine how well they have reformed. If they are determined to have reformed well, a recommendation may be made to the original decision maker to reduce their term of detention to one year. If, at the end of two years, the person is determined not to have rehabilitated well, a recommendation may be

⁸It is also important to note here that the scope of RETL is much broader than compulsory treatment of drug addicts. The new Law affects only those aspects of RETL that relate to detention of drug addicts and so the discussion in this paper is of reform to the drug dependency-related aspects of RETL and not to RETL as a whole.

⁹See discussion in State Council Legal Office, 'Notice on Publishing the Drug Rehabilitation Regulations (Draft for Comment) for Public Comment' at para. 1.3, 25 June 2010, available online at www.gov.cn/gzdt/2010-06/25/content_1636986.htm (accessed 19 May 2011).

made that the period of detention be extended for a further year, with the maximum period of detention being three years.¹⁰ As physical addiction and physical withdrawal can be achieved in a comparatively short period of time, the bulk of the period of detention can only be justified on the grounds that it is for the purpose of addressing issues of psychological addiction if detention is not to be understood as being primarily punitive in nature.

The Law does not set out any criteria for evaluating how well a person has rehabilitated for the purposes of shortening or lengthening their period of detention, but anticipates passage of detailed implementing regulations to do so. In February 2010, the Ministry of Justice, Drug Prohibition Bureau issued the Implementing Measures for Appraisal of Personnel in Coercive Quarantine for Drug Rehabilitation (for trial implementation), which legally are only binding on CQDR centres operated by the justice department. On the basis of these measures, local departments began to pass specific implementing measures. An early example is the Inner Mongolia Detailed Implementing Measures on Appraisal of CQDR Personnel. They require quarterly appraisal by an appraisal committee comprising: physiological condition (10 points); psychological progress (30 points); cognitive and educational progress (20 points); conduct, including work performance (30 points); and family and social capacity (10 points).¹¹ Where a person scores above 90 for the year, or is evaluated as 'excellent', a recommendation may be made to shorten the period of detention for between three and 12 months (Art. 40). A person may also receive an appraisal of excellent where they act to save private or public property, expose a serious crime and the perpetrator, expose or prevent a mass drug use or breakout, make a new technical advance that significantly improves production efficiency or saves a life (Art. 42). A person scoring below 60 will have their term extended by no less than six months (Art. 43). The Law provides that detainees may be organized to work and requires that detainees be paid for this work (Art. 43(2)). As the measures for appraisal of performance above demonstrate, work in a detention centre is not optional and work performance constitutes one of the performance criteria in determining the period of detention.¹² Similar appraisal mechanisms have been adopted in police-run CQDR centres, including those in Shenzhen and Beijing. However, until new implementing regulations for management of these centres are passed, both agencies continue to rely on their own pre-existing sets of regulations.¹³

In line with international principles, the Law also contains a number of provisions that seek to ensure that CQDR centres provide medical and other treatment to deal with addiction as well as to treat other diseases or illness of individual detainees (Arts 43, 44). Whilst the Law does not specifically require that HIV-positive detainees be provided with retroviral drugs, the requirement that medical treatment specific to the detainee's needs be provided is sufficiently broad to encompass this type of treatment. The Law also requires appointment of medical staff authorized to prescribe narcotic and

¹⁰Article 47; this provision is repeated but not elaborated on any further in the Draft Regulations, Art. 51. Instead, it provides for passage of separate appraisal regulations to be passed jointly by the public security and justice ministries.

¹¹Within each category, there is a detailed breakdown of the number of points to be allocated to listed items.

¹²A 2010 Human Rights Watch report contains a detailed analysis of forced labour in drug detention centres: Human Rights Watch (2010).

¹³For MPS-operated drug detention facilities, these are the 1995 State Council Measures on Coercive Drug Rehabilitation and, for the Ministry of Justice-operated drug detention facilities, these are the 2003 Regulations on Drug Rehabilitation in Re-education through Labour Work.

psychotropic drugs and that detainees be provided with MMT (Art. 45) without addressing the question of cost and liability to pay for these medicines. Here, there is a significant gap between legal rhetoric and practice, with an international NGO reporting that detention centres provide little, if any, medical treatment to detainees (Human Rights Watch 2008: 23–4; 2010: 31–3). The Draft Regulations also anticipate that, in some places, detention centres may have inadequate resources to treat serious illness, providing at Art. 43 that where a person has a serious life-threatening illness, the CQDR camp may seek approval from the original decision maker to release the person from detention and instead place them under a Community Rehabilitation order.

Giving up drugs and recovering health

After release from CQDR, a person may be subject to a further order by the original decision maker (the police at county level or above) to undergo a period of between one and three years of Giving up Drugs and Recovering Health ('Recovering Health') (Draft Regulations, Art. 53). Whilst the Law discusses Community Rehabilitation and Recovering Health as separate powers, in practice, there appears to be a degree of overlap between them, especially in relation to the community-based aspects of these orders. The stated aim of this period of supervision is to consolidate the results of CQDR and to prevent relapse. It has been equated to the extant measure of social help and education whose purpose is to educate and help juveniles in trouble and to assist people to reintegrate into the community after release from prison or re-education through labour (Huang 2008: 170–1). Whilst the Law itself does not describe how this type of order is to be given effect, the 2009 Annual Report on Drug Control in China discusses two forms: in a camp and in the community (Office of the NNCC 2009: Section 4). Community-based Recovering Health is to be implemented by analogy to Community Rehabilitation discussed above (Law, Art. 48) and so the discussion in this section focuses on camp-based Recovering Health.

The people's government at county level and above is authorized to establish 'giving up drugs, return to health centres' or to permit other groups to establish these centres in the public interest ('Recovering Health Centres') (Art. 43). After release from detention, the Law anticipates that reformed drug-dependent people may go to these centres to live and work. The official commentary on the Law explains this measure as being the voluntary election by a person released from CQDR to live in-camp for employment. It points to successful instances of such centres being established in Yunnan, Ningxia and Hainan (Huang 2008: 173). As with other forms of detention, Recovering Health Centres are permitted to organize people to work, but the law requires that they pay labour compensation (wages) in accordance with the state labour regulations.

To date, the RETL Bureau of the Ministry of Justice has been particularly active in the establishment of Recovering Health Centres. It has designated eight areas (Beijing, Shanghai, Hunan, Guangdong, Yunnan, Chongqing, Guangxi and Guizhou) as experimental sites to set up 'Recovering Health Centres' (Re-education through Labour Bureau 2009: 51). In some cases, former RETL camps have been remodelled to provide vocational education, organize work and carry out help and education to people after they are released from CQDR (Li and Huang 2008: 83). In other areas, such as in Yunnan, Recovering Health Centres were established on a trial basis even before passage of the

Law. In one case, a self-sufficient village has been built and, in another, a Recovering Health Centre has been established within one CQDR complex, though separated physically from the CQDR centre. The capacity of these camps so far is limited and so the number of residents is small. The 2010 Annual Report on Drug Control states that, in 2009, 35,000 people were ordered to undergo Recovering Health and, by the end of 2009, 81 Recovering Health Centres were being operated by the public security and justice departments, with a total population at any time of around 5,000 people. In 2009, the National Development and Reform Commission allocated over RMB 40 million (approximately \$4.2 million) in funds for the construction of a number of trial Recovering Health Centres (Office of the China National Narcotics Control Commission 2010). Whilst residence in these centres is officially voluntary, many of the residents who live there have not chosen to do so themselves. Officials responsible for management of these centres explain this as being the result of residents being unable to find employment or accommodation in the community after release from CQDR, with the family of many being unwilling to house or support them.

Legal Issues

The reform to legal regulation of administrative measures to deal with drug use and addiction has taken place in the context of a vigorous and long-standing debate about reform to the administrative powers of the police more broadly. The debate about how to reform RETL, for example, has been ongoing for nearly two decades (Biddulph 2007 chapter 9). These debates go to the heart of the values expressed in the emerging 'rule of law with Chinese characteristics'. To what extent should the law fetter police discretion by enacting substantive and procedural limitations on the exercise of police power? How should the exercise of police power be supervised and the police made accountable for abuses of their power? Regulation of state power to deal with socially disruptive and damaging conduct provides a valuable insight into the value choices reflected in China's developing legal system more broadly.

The Law resolves one aspect of the legal debate about the lawfulness and appropriateness of pre-existing forms of administrative detention by providing legislative authorization for the administrative detention of drug-dependent people for an initial period of two years. As discussed above, it does so in a way that preserves police discretion by providing for an interlocking set of broadly defined administrative powers and failing to specify mandatory procedures for decision making. At least, this law represents a setback for advocates of reform seeking to strengthen procedural safeguards and supervision of the exercise of administrative detention powers. This law also gives some indication of the limits to the adoption of international norms where they touch on the regulation of matters of fundamental importance to the state, such as social order and stability.

This section addresses two of these important legal issues. The first is the criteria for determining whether a person is drug-dependent, which, in the Law, is referred to as being a 'drug addict'. The second is specification of systems of oversight and accountability for decision making.

Who is a 'drug addict'?

An important threshold question is whether a person is drug-dependent or merely a drug user. For drug users, fines and a short period of administrative detention may be imposed under the SAPL. Drug-dependent people, on the other hand, may

be subject to a Community Rehabilitation order or detention in CQDR. Both groups may be placed on the register and subject to random drug tests thereafter. The Law itself does not set out any criteria for distinguishing between these two categories, leaving that task to implementing regulations that were passed by the MPS to take effect from 1 April 2011.¹⁴

These implementing regulations mark a distinct improvement over the previous standard used by the police to determine addiction: evidence of drug use coupled with a positive urine test.¹⁵ Article 2 reflects more closely the international standard of addiction, defining drug addiction as a ‘chronic, recurrent encephalopathy that is manifested as the inability to control the need to obtain and use drugs despite harmful consequences, and at the same time, to different extents with different people, having dysfunctional family and social relationships’.¹⁶ Addiction may be determined by the public security organs, though, where making a determination is difficult, they may refer the matter to a specialist drug-treatment organ (Art. 4). Article 7 specifies that the police may make a determination of drug addiction where the person has a positive drug test, there is evidence of drug use and the person shows signs of withdrawal, or there is evidence of drug-taking history including being on the police register or undertaking voluntary drug rehabilitation.

Accountability

The Law concentrates decision making in the hands of the public security organs, with the courts relegated to a marginal role in scrutinizing some, but not all, of these decisions. The courts have no role in primary decision making. These decisions are made principally by the police.

As a consequence, the chief mechanisms for accountability in decision making are through administrative review or administrative litigation. The Law empowers a person dissatisfied with a decision to send them to CQDR to commence either administrative review or administrative litigation (Art. 40). The Administrative Review Law 1999 enables challenges to be brought to an administrative review agency in the local government or the higher-level police agency against a specific administrative decision on the grounds that it is unlawful or inappropriate (Art. 3). The Administrative Litigation Law 1990 is framed more narrowly and enables a court to determine whether an administrative decision, though not an administrative rule, is lawful (Arts 2, 5). Courts are required to determine lawfulness on the basis of laws and administrative regulations¹⁷ but may also have ‘reference to’ administrative rules, such as the implementing regulations passed by the MPS discussed above.¹⁸ Whilst the legality of

¹⁴MPS, Measures for Determining Drug Addiction.

¹⁵MPS, Response to a Request for Instructions on Determining the Standard to Determine When People Who Smoke, Eat or Inject Drugs Are Addicted, 22 April 1998.

¹⁶The definition of ‘drug dependence’ issued by the World Health Organization International Classification of Disease (ICD-10) includes social, psychological and biological components. The description of drug dependence set out by the American Psychiatric Association is in terms of a ‘maladaptive pattern of substance use, leading to clinically significant impairment or distress’ (*Diagnostic and Statistical Manual of Mental Disorders*, published by the American Psychiatric Association; DSM-IV).

¹⁷Administrative Litigation Law, Art. 52. ‘Laws’ refers to legislation passed by the NPC or its Standing Committee. ‘Administrative regulations’ are those passed by the State Council.

¹⁸Administrative Litigation Law, Art. 53. In theory, this is a lower standard and the courts are entitled to ignore a rule that is in conflict with a higher-level law or administrative regulation, though, in practice, courts generally treat rules of this type as binding.

a decision includes conformity with mandatory procedural requirements, the Law itself does not set out any onerous procedural requirements for the exercise of these powers.

In addition, the scope of decisions that may be challenged through these mechanisms is narrow and excludes a determination that a person is a drug addict, a Community Rehabilitation order and a Recovering Health order. Even where a decision is within the scope of review or litigation, there is a real question about the efficacy of these mechanisms in ensuring police accountability for unlawful conduct. First, police powers continue to be defined in broad terms, making it difficult for a court or review organ to determine the decision to be 'unlawful' unless it is clearly and egregiously wrong. Second, courts have been particularly reluctant to exercise their powers vigorously in cases against the police, with very few successful challenges having been made to police decision making in respect of coercive drug rehabilitation or RETL.

Conclusion: So What Is New?

Whilst the implementation of this Law remains in its initial stages, a number of features of the system can be discerned. The first is that the different measures for dealing with drug dependency are still primarily organized around the police in a number of important respects. The police are responsible for registration of drug users, supervision of Community Rehabilitation, exercise power to determine that a person is a drug addict, exercise the power to impose CDQR and to approve decisions to lengthen or shorten the period of detention. Even drug addicts who voluntarily admit themselves to a private clinic will be registered with the police and reported to the police if they are found to have relapsed during their treatment. After release, all people on the register will potentially be subject to ongoing compulsory drug testing.

The second is that the law emphasizes the use of coercive drug rehabilitation orders, both custodial and non-custodial. These forms of rehabilitation are interlinked and operate in three stages, each potentially of three years in length. Detainees are required to work, both in detention and if they continue to live in a 'Recovering Health' centre after release. Whilst the Law contains a general requirement that detainees be provided with medical treatment and counselling, these cannot be given effect unless specific provision is made to allocate financial resources and specialist personnel to this task.

Whilst the Law has only been in effect since 2008, it appears that the predominant method used for dealing with drug-addicted people remains detention, with community-based forms of rehabilitation still occupying a secondary role. The 2010 Annual Report on Drug Control in China states that, in 2009, nationwide, 47,000 people were subject to an order to undergo Community Rehabilitation and 35,000 ordered to undergo Recovering Health. However, 173,000 were sent to CQDR (Office of the NNCC 2010: Section 4). Similarly, the official paper, *Liberation Daily*, reported on 23 July 2010 that there had been 1,437,000 people placed on the police register, with 212,000 currently in CQDR and 112,000 in the community on either Community Rehabilitation or Recovering Health orders; 115,000 people were participating in community-based MMT programmes. Some success for these measures has been claimed. For the three-year period to the end of June 2010, official reports claim 67,000 people remained drug-free after treatment (Jia 2010).

As this paper shows, the Law imposes a very heavy enforcement burden on the local police in respect of all aspects of management of drug users and drug-dependent people. These

local levels of the police force already have an extremely heavy workload, as they are also responsible for policing the wide range of matters related to maintenance of social order and crime prevention and control in the community. The availability of resources, specialist personnel and training will be an important factor in influencing the modes of police enforcement and whether the police will change from their current practices in dealing with drug dependency and drug-related crime. For example, police remain highly responsive to specialist struggles against drugs that remain ongoing despite some recent moves away from the Hard Strike policy. These demand that the police concentrate their resources on striking hard against a designated problem, with success depending on meeting the enforcement targets that are set as part of that campaign. This style of policing is antithetical to the long-term stability and successful implementation of MMT and of HIV testing and treatment programmes amongst IDUs. Similarly, the capacity of CQDR to produce more successful outcomes than coercive drug rehabilitation and drug rehabilitation in RETL in terms of reducing relapse rates depends very much on a greater commitment to the adequate resourcing of specialist management and medical personnel and treatment programmes in the detention centres and the provision of comprehensive support services after release.

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