

THE PROTECTION AND REMEDIES FOR VICTIMS OF CRIME AND ABUSE OF POWER IN CHINA

*Gao-Feng Jin**

I. INTRODUCTION

Considerable attention has been paid to ensure due process and establish fundamental rights for suspects and defendants in modern criminal justice systems in China. However, corresponding attention has not been given to the rights and interests of victims. As a result, victims of crime and abuse of power can rightfully be called the “forgotten persons”. Accordingly, it did not seem necessary to stipulate special provisions on the role of victims in judicial proceedings. When the Criminal Law and Criminal Law Procedure of the People’s Republic of China were issued in 1979, China began to focus on the protection of victims.

However, it is believed that a system of protection and support for victims of crime and abuse of power has been developed in China. This development process can be divided into three stages since the 1980s. The first stage was the stipulation of the national law norms to prescribe financial compensation to victims from offenders. For example, Article 31 of the Criminal Law of the PRC (People’s Republic of China) in 1979 stated, “Where the victim has suffered economic loss as a result of a criminal act, the criminal, in addition to receiving criminal sanctions according to law, shall in accordance with the circumstances be sentenced to pay compensation for the economic loss”. Accordingly, the Criminal Law Procedure of the PRC in 1979 established a system of incidental civil actions. Consequently, the victims of crime were entitled to access to prompt judicial redress for the harm and loss they had suffered.

The second stage was from 1996 when legislators amended the statutes in order to upgrade the legal status of victims and to grant them more rights. China’s legislators made major amendments to the first Criminal Procedure Law of 1979 in 1996, and also amended the Criminal Law in 1997. The New Criminal Law and Criminal Procedure Law comprised a series of clauses corresponding with the international human rights standards and norms on criminal justice, for example, the basic procedural principles of presumption of innocence, no inquisition by torture, the system of defence, legality of crime and punishment and open trial. Implementation of the revised laws started a significant reform in criminal justice in China. As a result, the litigious rights of the suspects, the victims and the defenders have been improved greatly. Especially, the victims of crimes became one of the parties and they participated in the criminal justice process actively and independently.

Based on China’s Criminal Procedure Law (1996) and Criminal Law (1997), the legal status and rights of victims of crime in the criminal justice process are as below:

- Victim became a party, and was entitled to all kinds of rights as a party (Article 82.2 of Criminal Procedure Law)
- A victim has the right to entrust agents ad litem (Article 40,41 of Criminal Procedure Law)
- A victim may initiate a private prosecution (Article 170 of Criminal Procedure Law)
- Civil compensation to the victim prior to a fine or confiscation of property (Article 36 of Criminal Law)
- The legitimate property of the victims shall be promptly returned to them (Article 64 of Criminal Law)
- No limitation during the period of prosecution is imposed in cases after the victim has filed charges within the period for prosecution (Article 88 of Criminal Law)

These provisions on the victims of crime have drawn almost universal acclaim and have been seen as a milestone on the road to protection and redress of victims of crime in the field of criminal justice in China.

The third stage aims to strengthen the immediate and direct support and redress for the victim and entitle them to have more access to mechanism of justice and fair treatment. This stage is being put into effect mainly by revising the Criminal Procedure Law for the second time. According to relevant sources,

* Teacher and Researcher, Chinese People’s Public Security University, China.

China's top legislature is considering revising the Criminal Procedure Law in 2006 and approving it in 2007, highlighting the prevention of torture for extortion of confessions.

In summary, based on the philosophy that victims of crime should be treated with compassion and respect for their dignity and the adoption of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985), China's protection and redress system for victims of crime has developed and been perfected gradually since the 1980s. There is much evidence that adequate measures for the improvement of treatment, including changing the legal system, have been taken by the State. However, there are problems relating to the protection of victims of crime in China. China is going to take active countermeasures to adopt and implement the Declaration, including enacting and amending the laws, promoting victim prevention, reducing victimization, providing financial compensation and legal aid to victims by the government, and encouraging assistance to victims in distress.

II. THE PROTECTION AND REDRESS OF VICTIMS OF CRIME IN CHINA

A. Current Situation in Relation to the Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process in China

1. Measures to Protect Victims of Crime

(i) *The swift victim restoration system in China*

In fact, restorative justice is a new term in China. It was not until community correction in 2003 that the term was introduced. China's victim restoration system is not perfect. The restorative justice approaches to solve conflicts between parties are used to restore peace:

- Conciliation procedure in incidental civil actions (Article 96, 97 of A Judicial Interpretation on Criminal Procedure Law of the Supreme People's Court of China)
- Reconciliation between the victim and offender by themselves
- Police's mediating
- Peoples Court's mediation (Article 172 of the Criminal Procedure Law)

a) *Conciliation procedure*

According to a Judicial Interpretation on the Criminal Procedure Law of the Supreme People's Court of China, the people's courts may carry out a conciliation in accordance with the principles of voluntarism and lawfulness except for a case of public prosecution initiated in incidental civil actions; if conciliation efforts are ineffective, an incidental civil action shall be heard together with the criminal case.

b) *Reconciliation between victim and offender by themselves*

The victim does not call the police after the incidence of a crime, and the conflict is resolved by themselves between the victim and offender. According to a recent survey by Chuangshi Law Firm in Shandong Province, 25% of criminal cases in rural areas are resolved by themselves; and 4% in the city. To sum up, this reconciliation has the features as below:

- It often happens in a case of rape, sexual assault, homicide, injury, theft, fraud, and so on.
- It often happens in rural areas.
- The victim and the offender have a certain social relationship.
- It is illegal and there is not any legal procedure.
- It benefits both the victim and the offender.

Why do the victims agree to resolve the issue by themselves?

- They feel threatened by the offender.
- They fear the loss of their reputation.
- They fear losing the suit and the financial consequences.

c) *Police's mediation*

To avoid repeated conflict and victimization, community police often bring the offender and the victim together in face-to-face meetings seeking reconciliation. It is contained in the community prevention against crimes.

d) *Peoples Court's mediation*

According to Article 172 of the Criminal Procedure Law, A People's Court may conduct mediation in a case of a private prosecution; the private prosecutor may arrange a settlement with the defendant or withdraw his prosecution before the judgment is pronounced. Mediation shall not be conducted for cases stipulated in sub-paragraph (3) of Article 170 of this Law.

(ii) *The compensation system for victims of crime in China*

The compensation system for victims of crime in China supports the restitution by offenders of victims. It is really a pity that the State doesn't offer any compensation.

The provisions relating to restitution by offenders to victims are contained in China's Criminal Procedure Law (1996) and Criminal Law (1997):

- Article 36, 64, 88 of the Criminal Law.
- Article 77, 78 of the Criminal Procedure Law (Chapter VII Incidental Civil Action).
- A Regulation on Incidental Civil Action in the Supreme People's Court of China. (2000-12-13).

In the Chinese legal system, restitution by offenders to victims is realized by an incidental civil action procedure. The incidental civil action procedure is conditioned by:

- The premise of initiating a criminal action, or only initiating a civil compensation action by victims.
- A victim has suffered material losses from crime, including: 1) the direct victim; 2) the agent ad litem or guardians of no capacity for civil conduct; 3) legal heir of the dead victim; and 4) If losses have been caused to State property or collective property, the Peoples Procuratorate may file an incidental civil action while initiating a public prosecution. What is more, victims can be citizens (natural person), companies, enterprises, institutions, State organs, or organizations.
- A victim has suffered material losses as a result of the defendant's crimes. The material losses include actual losses the victim has suffered and inevitable losses. However, compensation for mental injury is excluded. If a victim has suffered mental injury as a result of the defendants' criminal act, and files an incidental civil action during the course of the criminal proceedings, the People's Court will refuse to accept it.
- Time duration of filing an incidental civil action: from filing a criminal case to the judgment of procedure of first instance being pronounced.
- The way an incidental civil action is filed: writing a bill of complaint or lodging the complaint orally.

Restitution is swift in China. On the one hand, the property of the victim which is illegally possessed or disposed of by the offender shall be promptly returned. On the other hand, an incidental civil action shall be heard together with the criminal case. To prevent excessive delay in the trial of the criminal case, the same judicial organization, after completing the trial of the criminal case, continues to hear the incidental civil action.

The restitution or return of property by offenders to victims may be considered as a form of punishment.

(iii) *Protection of victims and witnesses*

In China, the system of protecting witnesses has been developed since 1979, and there are some regulations for witnesses' security and for forbidding retaliation against witnesses in the current law. According to China's Criminal Procedure Law (1996) and Criminal Law (1997), the protection of witnesses involved:

- Ensuring the safety of reporters, complainants and informants as well as their near relatives. If the reporters, complainants or informants wish not to make their names and acts of reporting, complaining or informing known to the public, these shall be kept confidential. (Article 85.3 of Criminal Procedure Law).
- Ensuring the safety of witnesses and their near relatives. (Article 49.1 of Criminal Procedure Law).
- Criminal Liability for violation of public security, if anyone intimidates, humiliates, beats or retaliates against a witness or his near relatives. (Article 49.2 of Criminal Procedure Law).
- Criminal liability for obstructing a witness from giving testimony. (Article 307 of Criminal Law).

- Criminal liability for retaliating against a witness. (Article 308 of Criminal Law)

However, these regulations for the protection of witnesses are all more general and abstract. In general, the main problems of the system for the protection of witnesses are:

- A lack of ways to provide witness' protection.
- Victims and their near relatives are not protected.
- A lack of procedure for witness' protection.
- There are no concrete provisions as to how to protect witnesses, who implements the protection, protection time limits and degree of protection, etc.

However, witnesses' protection work is explored in some local people's procuratorates and people's courts. For example, the procuratorate in Bao'an District of Shenzhen city in Guangdong Province has implemented a regulation incorporating a witness protection programme. However, it is really a pity that the victim is neglected. Meanwhile, a case on witness' protection occurred in Guangzhou Intermediate People's Court. During the seminar on revising hot issues of three major legal procedure laws, the vice-president of the Supreme Judicial Court Huang Songyou put forward the proposal that the state should set up a special fund to compensate for the necessary expenses of testifying witnesses. Moreover, China's Criminal Evidence law will be adopted.

(iv) *Methods of testimony in order to protect victims and witnesses*

According to Article 42 of the Criminal Procedure Law, the testimony of witnesses and statements of victims are legal evidence. Methods of testimony in order to protect victims and witnesses are as below:

- If the reporters, complainants or informants do not wish to make their names and acts of reporting, complaining or informing known to the public, these shall be kept confidential for them. (Article 85.3 of Criminal Procedure Law).
- Questioning a victim or witness at his unit or residence. When necessary, they may also notify the witness to give testimony at the Peoples Procuratorate or public security organ. (Article 97.1 of the Criminal Procedure Law).
- Questioning a victim or witness by more than two investigators, procurators or a judge.
- Witnesses shall be questioned individually. (Article 97.2 of Criminal Procedure Law).
- When a witness under the age of 18 is questioned, his legal representative may be notified to be present. (Article 98.2 of Criminal Procedure Law).
- It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. The evidence collected by the above-mentioned unlawful means cannot be used as the basis for deciding cases. (Article 43 of the Criminal Procedure Law; Article 61 of A Judicial Interpretation on Some Issues of Criminal Procedure Law of the Supreme People's Court of China).
- The private affairs of individuals involved as victims or witnesses shall be kept confidential for them.
- The victims should be treated well: (1) While questioning victims first the investigator, procurator or judge should tell the victims of their right to initiate an incidental civil action; (2) Ensuring the safety of victims.
- When examining a case, the Peoples Procuratorate shall heed the opinions of the victim and of the persons entrusted by the victim on evidence, compensation and disposal of the case. (Article 139 of Criminal Procedure Law).
- The victim may present statements regarding the crime accused in the bill of prosecution in the court, and the victim and the agents ad litem may state their views on the evidence and the case. (Article 155,160 of Criminal Procedure Law).

2. The Active Participation of Victims in the Criminal Justice Process

In China's Criminal Procedure, the victim is one of the parties. However, a victim can possibly act in all kinds of roles, as the following:

- A private prosecutor in a case of private prosecution. (Article 170 of Criminal Procedure Law)
- The plaintiff in an incidental civil action.
- Participant in the proceedings.
- A role similar to a witness.

In the proceedings, a victim as a party has the same rights as other parties have, as the following:

- Complaints.
- The right to demand his/her withdrawal.
- Participating in the court investigation and court debate.
- Presenting a petition to legally effective judgments and orders. (Article 204 of Criminal Procedure Law).

The victim in the proceedings enjoys special rights as below:

- The right to entrust agents ad litem. (Article 40 of Criminal Procedure Law).
- The right to report or bring a complaint when a victim's personal or property rights are infringed upon. (Article 84.2 of Criminal Procedure Law).
- The right to bring the matter of a public security organ's not filing a case to a people's procuratorate to request the public security organ to state the reasons for not filing the case or to file the case.
- The right to present a petition to the People's Procuratorate at the next higher level and request the latter to initiate a public prosecution, if the victim refuses to accept the decision not to initiate a prosecution. (Article 145 of Criminal Procedure Law).
- The right to request the Peoples Procuratorate to present a protest, if the victim or his legal representative refuses to accept a judgment of first instance made by a local Peoples Court at any level.
- The right to bring a suit directly to a Peoples Court as to a case of private prosecution. If the victim is dead or has lost his faculties, his legal representatives and near relatives shall have the right to bring a suit to a People's Court. (Article 88,170 of Criminal Procedure Law).

Victims or their near relatives may file a compensation claim to the people's court for material losses. Thus, victims enjoy the right to file a compensation claim against offenders.

3. Providing Information for Victims of Crime

According to China's Criminal Procedure Law, a victim could share all kinds of information on the proceedings at each stage of the criminal justice process, and the investigator, procurator or judge shall provide information of procedural rights, results and reasons for a victim of crime.

- If the victim reports or brings a complaint to a public security organ, people's procuratorate or a people's court, and the case is not filed, they shall notify the victim of the reason. If the victim does not agree with the decision, he/she may ask for reconsideration. (Article 86 of Criminal Procedure Law).
- If the Peoples Procuratorate decides not to initiate a prosecution with respect to a case that involves a victim, it shall send the decision in writing to the victim. If the victim refuses to accept the decision, he may, within seven days after receiving the written decision, present a petition to the Peoples Procuratorate at the next higher level and request the latter to initiate a public prosecution. The Peoples Procuratorate shall notify the victim of its decision made after re-examination. (Article 145 of Criminal Procedure Law).
- If the victim or his legal representative refuses to accept a judgment of first instance made by a local Peoples Court at any level, he shall, within five days from the date of receiving the written judgment, have the right to request the Peoples Procuratorate to present a protest. The Peoples Procuratorate shall, within five days from the date of receiving the request made by the victim or his legal representative, decide whether to present the protest or not and give him a reply. (Article 185 of Criminal Procedure Law).
- The victim should be notified of all sorts of rights at each stage of the criminal justice process.

B. Problems and Effective Countermeasures Relating to the Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process in China

Based on the above analysis of China's system of protecting victims of crime, we can draw the conclusion that a system has been established by the law generally, however, it is not perfect.

1. Restorative Justice

Restorative justice represents a paradigm shift in the way justice is dispensed in criminal justice systems. The framework for restorative justice involves the offender, the victim and the entire community in efforts to create a balanced approach that is offender-directed and, at the same time, victim-oriented. The framework of restorative justice in China can best be described as a combined emphasis on building victim-offender-mediation by law and administrative measures. It is suggested:

- Building an institute for victim-offender mediation on the basis of a people's conciliation committee¹.
- Establishing a special procedure for victim-offender mediation, involving cases of private prosecution, juvenile delinquency and misdemeanour, even violent crime.
- Strengthening community corrections.

2. Crime Victim Compensation for Mental Injury

A system of financial reparation by the offender has been established; however, it shall be improved with the following programmes:

- (i) Establish redress measures when a victim who suffers material loss, as a result of the defendant's criminal act, cannot be compensated by an offender.
- (ii) Add compensation for mental injury by offenders to victims by amending the criminal law and criminal procedure Law.

According to China's law, if a victim who has suffered mental injury as a result of the defendant's criminal act files an incidental civil action during the course of the criminal proceedings, or initiates a civil lawsuit for mental injury, the people's court will not accept it. That is to say, a victim of crime does not have the right to initiate a lawsuit for mental injury, or to receive compensation for mental injury.

In the last few years, legal experts suggested that criminal compensation for mental injury should be established with the adoption of compensation for mental injury in the civil law². As we know, such victims and their near relatives in, for example, rape, homicide and injury cases often suffer from mental injury rather than material loss. Thus, those victims, and their near relatives, of crimes should be granted the right to claim compensation for mental injury by incidental civil action or civil procedure. But the scope of compensation for mental injury should be limited to such crimes as sexual assault and violent crimes.

3. Victim Financial Compensation by the State

According to Article 12 of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, when compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization. However, the system of victim compensation from the State is not established yet in China. In other words, if victims cannot receive compensation from the offender, they will have no financial compensation. For example, the famous case of the Ma Jiajue homicide. Ma Jiajue, a college student who was sentenced to death for killing four of his Yunnan University classmates, was executed in Southwest China's Yunnan Province on June 16 2004, and his family had no property to compensate the near relatives of the four victims. Therefore, it is necessary to establish a system of victim compensation from the state for criminal victims.

- Setting up a compensation fund.
- The fund comes from fines and confiscations.
- Founding compensation organs under the Ministry of Justice.
- Stipulating the scope of compensation, claimants for compensation and organs for compensatory obligations, procedures for compensation and methods of compensation and calculation standards.

4. Enhancing the Protection of Witnesses and Victims

The protection of witnesses and victims shall be completed by the amendment of the Criminal Procedure Law or drawing up the law of protection of witnesses and victims. The law should stipulate that witnesses, victims, their near relatives and others in relation to them should be protected. Accordingly, the protection

¹ According to Article 16 of the Civil Procedure Law of the PRC and Regulation on People's Conciliation Committee Organization, People's Conciliation Committee is a mass organization to conciliate civil disputes, which is to function under the guidance of the grass-roots people's governments and the basic people's courts, and it is set up under Villagers' Committees or Residents' Committees.

² The Interpretation of the Supreme People's Court on Some Issues of Determining Liability for Mental Suffering Caused by Tortious Act was adopted on 8 March 2001; The Interpretation of the Supreme People's Court on Some Issues of Compensation Caused by Infringing Upon the Person was adopted on 1 May 2004.

organs must be founded, and the protecting procedure should be made clear.

5. Adding Litigious Rights of Victims

Although the Criminal Procedure Law grants victims a number of litigious rights, some fundamental rights are lacking, such as the right of legal aid, state compensation and participation in penal execution. Hence, these rights of victims should be strengthened in the future.

III. THE PROTECTION AND REDRESS OF VICTIMS OF ABUSE OF POWER IN CHINA

In 2005, two notorious cases, the case of She Xianglin³ and case of Li Jiuming⁴ shocked all the country. As a result, the issue of abuse of power was focused on.

Based on these two cases, the top legislature has put the revision of the Criminal Procedural Law into its five-year legislation plan to prevent and control the widespread use of torture to extort confessions. Meanwhile, the country's top prosecuting authority launched a nationwide campaign to crack down on officials who abuse their power and neglect their duties.

According to statistics released by the Supreme People's Procuratorate (SPP), From 2000 to June 30 2005, the investigation of 34,685 economic cases related to government officials' abuse of power and dereliction of duty resulted in the prosecution of 38,554 officials. These crimes led to an economic loss of 48.5 billion yuan (US\$ 5.86 billion). Between July 1 2004 and the end of May 2005, the nation's prosecutors handled more than 1,204 cases of bodily harm or the violation of civil rights, up 7.7 per cent from the corresponding period of the previous year. The criminal cases involved more than 1,750 government officials, an increase of 8.3 per cent over the previous one-year period. SPP Deputy Procurator-General Wang Zhenchuan said at a press conference: "Some judicial officials were often found to conduct illegal detainment and searches, obtaining evidence and prosecuting crimes through illegal means".

A. Measures to Protect Victims of Abuse of Power in the Criminal Process

1. The Legal System of Protecting Victims of Abuse of Power

On 16 March 1996, China's legislature made major amendments to the first Criminal Procedure Law. The amendment absorbs and applies the essence of the United Nations Standards and Norms. The Criminal Procedure Law transforms or adopts the United Nations Standards and Norms as following:

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Prevention and Punishment of the Crime of Genocide
- The Convention on the Rights of the Child
- The Convention on the Elimination of all Forms of Discrimination against Women
- The Declaration on Violence against Women
- The International Convention on the Suppression and Punishment of the Crime of *Apartheid*
- The Standard Minimum Rules for the Treatment of Prisoners
- The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
- The Code of Conduct for Law Enforcement Officials
- The Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Conventions against the seizure of diplomats and taking of hostages, relevant instruments related to crimes against humanity, crimes against peace, and war crimes

³ She Xianglin, a Hubei Province farmer was convicted of murdering his wife based on shaky and conflicting evidence and testimony. He was declared innocent after 11 years in prison, when his ex-wife reappeared on a recent trip to her ancestral home.

⁴ Two police officers in Tangshan, Hebei Province, were sentenced to two years in prison for extorting confessions by torture. The victim, Li Jiuming, who had been sentenced to death with a two-year reprieve on charges of intentional homicide and illicit possession of weapons in 2003, was found innocent and released last November.

Generally speaking, China's measures to protect victims of abuse of power exist in Criminal Procedure Law, Criminal Law, State Compensation Law, Police Law and judicial interpretations and regulations. It mainly includes:

- Any judicial officer who extorts a confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to a fixed-term of imprisonment of not more than three years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the provisions of Article 234 (crime of intentionally inflicting injury) or 232 of this Law (crime of homicide).(Article 43 of the Criminal Law).
- No inquisition by torture. It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means. Conditions must be guaranteed for all citizens who are involved in a case or who have information about the circumstances of a case to objectively and fully furnish evidence and, except in special circumstances, they may be brought in to help the investigation. The evidence collected by the above-mentioned unlawful means cannot be used as the basis for deciding cases. (Article 43 of Criminal Procedure Law; Article 61 of A Judicial Interpretation on Some Issues of Criminal Procedure Law of the Supreme People's Court of China).
- A defendant cannot be found guilty and sentenced to criminal punishment if there is only his statement but no evidence; the defendant may be found guilty and sentenced to criminal punishment if evidence is sufficient and reliable, even without his statement. The evidence collected by the above-mentioned unlawful means cannot be used as the basis for deciding cases. (Article 46 of Criminal Procedure Law).
- Where organs and their personnel which exercise the functions and powers of detection, prosecution, adjudication and administration of prison cause any of the following infringements upon personal rights or property rights when exercising their functions and powers, the aggrieved person shall have the right to recover damages. (Article 15, 16 of Law of the People's Republic of China on State Compensation).
- A criminal suspect and the accused enjoy various litigious rights, including defensive rights and remedy rights, the former such as the right of defence, the latter such as complaint.

2. The System of Criminal Compensation by the State

(i) *The legal system of criminal compensation by the State*

Compensation by the State was stipulated in the Constitution of the PRC in 1982 and General Principles of the Civil Law of the PRC in 1986 at the beginning inclusive of the provisions below:

- Citizens who have suffered losses through infringement of their civil rights by any state organ or functionary have the right to compensation in accordance with the law. (Article 41.3 of Constitution of the PRC).
- If a state organ or its personnel, while executing its duties, encroaches upon the lawful rights and interests of a citizen or legal person and causes damage, it shall bear civil liability. (Article 121 General Principles of the Civil Law of the PRC).

The Law of the People's Republic of China on State Compensation was adopted and issued on May 12, 1994. This Law marked the establishment of China's system of compensation by the State, hence criminal compensation by the State leads to legitimacy and regulation.

Chapter 3 of the Law of the People's Republic of China on State Compensation stipulates the scope of compensation, claimants for compensation and organs for compensatory obligations and procedures of compensation. And Chapter 4 of the Law states methods of compensation and calculation standards.

(ii) *Criminal compensation by the State*

a) *The compensation of infringements upon personal rights*

According to Article 15, if organs and their personnel which exercise the functions and powers of detection, prosecution, adjudication and administration of prison cause any of the following infringements upon personal rights when exercising their functions and powers, the aggrieved person shall have the right to recover damages:

- The wrongful detention of a person without criminal facts or without facts evidencing the person with gross criminal suspicion.
- The wrongful arrest of a person without criminal facts.

- An adjudication of innocence is given to change an original sentence in the retrial according to the procedure for trial supervision, and the original sentence of penalty has been executed.
- Bodily injury to or death of a citizen caused by torture or such violent acts as battery or abetting others in battery.
- The bodily injury to or death of a citizen caused by the unlawful use of a weapon or police apparatus.

As a result of abuse of power, a wronged man, She Xianglin demanded the State compensate him 4.37 million yuan (US\$528,000) from the local courts and police according to the State Compensation Law. The compensation amount was based on She's mental injuries, restrictions of his freedom and infringements on his rights of life and health.

b) Compensation for infringements upon property rights

According to Article 16, if organs and their personnel which exercise the functions and powers of detection, prosecution, adjudication and administration of prison cause one of the following infringements upon property rights when exercising their functions and powers, the aggrieved person should have the right to recover damages:

- where there is a measure, such as sealing up, distraint, freezing or recovery of property in violation of the law;
- where an adjudication of innocence is given to change an original sentence in the retrial in accordance with the procedure for retrial supervision, and the original court supervision of a fine or confiscation of property has been executed.

The system of State compensation in China is being completed step by step. The enforcement organs took measures to guarantee compensation for victims of abuse of power. On July 14, 2005, both the Supreme People's Procuratorate (SPP) and the Supreme People's Court of the PRC stressed that cases of State compensation shall be tried and executed without delay.⁵ In Jiangsu Province in the southeast of China, the People's Court demanded that judges should be punished by both financial and disciplinary means.

B. Problems and Countermeasures in Relation to the Protection of Victims of Abuse of Power in China

Legal experts believe the cases of freed prisoners, such as the case of She Xianglin, highlight loopholes in the law which should be plugged. According to some academics, although strictly forbidden by law, forced confessions are not unusual in China.

To prevent abuse of power, justice organs took various effective countermeasures. The Ministry of Public Security has initiated a nationwide campaign since 2004 to improve the police's capability of criminal investigation. The police were urged to strengthen their study of fundamental investigative knowledge, and improve their on-site investigation ability with the assistance of high-tech facilities, such as DNA tests. In May 2004, the country's top prosecuting authority launched a nationwide campaign to crack down on officials who abuse their power and neglect their duties. The Supreme People's Court is now considering retrieving the right to review the death penalty from the provincial high people's courts, so as to guarantee fairness and prudence of capital punishment. Police authorities in Zhejiang Province have instituted stern rules to discipline its police forces by firing anyone who tortures detainees or prisoners.

The call for revision of the criminal procedure law came when cases of injustice were exposed. Chen Weidong, Professor of Renmin University of China, was quoted as saying that China's current Criminal Procedure Law is hard to implement with lots of loopholes in it. He said, while the current Criminal Procedure Law strictly prohibits the use of any forms of torture in police custody, a lack of relevant concrete provisions has actually led to the "biggest unfairness", hence, revision of the law should place emphasis on the establishment of the principles of the 'presumption of innocence' and 'rule of lenity' in the hope of cracking down on abuse of power.⁶

⁵ The notice on the issue of defining organ for compensatory obligations of the Supreme People's Procuratorate (SPP) and the Supreme People's Court of the PRC.

⁶ "Law revision to outlaw torture for confessions", China Daily of 14 July 2005.

It is expected that the revised Criminal Procedure Law will be presented to the National People's Congress in 2006 and be approved in 2007. At the same time, legislators are stepping up efforts to promote the revision of the State Compensation Law. According to legal experts, it is necessary to amend the State Compensation Law of 1994 with the fourth amendment of the Constitution of the PRC in 2004 so as to effectively guarantee fundamental human rights of the victim from the abuse of power.

In order to control and prevent abuse of power, sound measures must be taken, including establishing transparency and accountability of criminal justice agencies and protecting the fundamental human rights of suspects, defendants and offenders.

- Establish the principles of the 'presumption of innocence' completely.
- Grant suspects and defendants the right of silence.
- Establish and carry out the exclusionary rule of illegally obtained evidence.
- Establish the Rule of Lenity.
- Lawyer presence while suspects are questioned.
- Investigation and detention are separated.
- Police appear in court as witnesses.
- The system that witnesses should be present at court to give their testimony needs to be improved.
- Expand the scope of criminal compensation by the State.
- Grant the victims in abuse of power cases the right to State compensation for mental injuries.
- Increase the amount of money for compensation.
- Strengthen the punishment of obligators.

Some measures are being tested. For example, the system of having lawyers present while suspects are questioned is being carried out in the Haidian Public Security Bureau of Beijing.

IV. CONCLUSION

Generally speaking, the systematic protection and the support of victims of crime and abuse of power began in the 1980s. The Criminal Law of the PRC and Criminal Law Procedure of the PRC in 1979 specifically stipulated the victim compensation system.

Since the 1980s, there has been great progress in the protection and support of victims of crime and abuse of power. On the basis of related UN Conventions and Documents, China amended the Criminal Law of the PRC in 1996 and Criminal Law Procedure of the PRC in 1997. The Criminal Procedure Law of the PRC of 1996 is a milestone in the field of protection of human rights. For one thing, it stipulates defensive litigious and redress rights of the suspects and the defendants which not only guarantee them from being victims of abuse of power, but also provides a redress pathway to victims on the safe side. For another thing, it ensures the victims' litigious rights and substantial rights.

To sum up: the system of protecting and supporting victims of crime in China has been established in various aspects as follows.

- The application of restorative justice approaches;
- The restitution by offenders to victims by an incidental civil action procedure;
- The protection of victims and witnesses from offenders;
- The active participation of victims as a party in the criminal justice process. As a result, the victim in the proceedings enjoys parties' litigious rights and other special litigious rights;
- Providing information for victims of crime at each stage of the criminal justice process.

However, compared with the requirements of the United Nations Declaration the protection and redress of victims in China still have a long way to go. China is doing her best to improve this system through legislation and administrative measures in the following ways:

- Establishing victim-centred restorative justice involving the offender, the victim and the entire community;
- Establishing criminal compensation for mental injury caused by the offender;
- Providing financial compensation from the State;
- Enhancing the protection of witnesses and victims;
- Increasing victims' rights to legal aid and participation in penal execution.

The Chinese government always forbids and prevents abuse of power to protect the rights of citizen. Overall prevention measures and legal consequences are stipulated specifically in laws. Recently, cases of extorted confessions from criminal suspects by torture and those of extorted testimony from a witness by violence have been disclosed. This shows the effectiveness of legal supervision. The following measures have been taken to forbid and prevent abuse of power:

- It is strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means in criminal Proceedings;
- Any judicial officer who extorts a confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence will be punished;
- State compensation is provided for infringements upon personal or property rights.

To prevent the abuse of power, China's top law enforcement organs are taking various forms of action to reform the old justice system to reduce the possibility of harming innocent citizens. China's legislators are making efforts to amend the Criminal Procedure Law of 1979 and State Compensation Law of 1994. The revision of the Criminal Procedure Law shall place emphasis on preventing and cracking down on the abuse of power. The State Compensation Law will focus on how much money will be awarded as compensation, compensation for mental injury and the punishment of obligators. Furthermore, the laws concerning the protection of victims and witnesses are in the process of being drafted and the victim assistance law has been proposed to be enacted.

It is firmly believed that the system for the protection and redress of victims will be improved soon with the development of criminal justice reforms in China.