

Chapter 8

Human Rights Issues



In China's white papers on human rights issued in the past 15 years,¹ the ruling party and government have claimed all the credits for the progress and improvement of human rights occurred in the country in the past decades, particularly since 1949. These papers reviewed the devastating human rights situation in old China where great losses of lives and dramatic fall of living standard caused by hundreds of wars waged by western powers and the Japanese.² A direct consequence of these wars was China's relinquishment of its sovereign status in the international society, leading to deprivation of the Chinese people's human rights on many fronts. For instance, in some Japanese occupied provinces, eating rice was a crime of high treason³; and at the entrance of a park in the French concession a signboard read "Chinese and dogs not permitted" was setup in the nineteenth century.⁴ According to China's statistics, by way of unequal treaties, imperialist powers "made away with more than 100 billion taels of silver as war indemnities and other payments".⁵ This drove the population as a whole into the abyss of poverty.

The reports highlighted the lift of Chinese citizens' civil, political and economic rights with the establishment of an independent China since 1949. Tremendous efforts have been made to ensure that people's economic needs have been met.⁶ The principal achievements made in human rights improvement include: political freedom, economic equality, protection of women and children's rights, guarantee of the rights of the minorities, and protection of the disabled.

In the meantime, China acknowledged that certain dissatisfactions exist in human rights advancement, given its stand as a developing country. As a result, after the

¹ The first white paper on human rights was introduced in 1991, entitled *Human Rights in China*.

² See State Council Information Office of the People's Republic of China, "The Foremost Human Right the Chinese People Long Fight for" (*Human Rights in China* 1991).

³ It was because the Japanese desired to have all rice available for their own consumption.

⁴ See supra note 1.

⁵ Ibid.

⁶ "To eat to fill and dress warmly" as the government puts, *ibid*.

first white paper on human rights being released in 1991, the white papers of the following years were arranged as a series sequentially informing the progress made and the actions taken in human rights promotion in each year.⁷

Nevertheless, it is an undeniable fact that contemporary China is plagued by a wide range of human rights related issues and problems. In addition to those arising in the areas of religious toleration, judicial practice, treatment of labor and forced abortion, which were extensively reported by the media in the past, some newly emerged problems concerning human rights violation are much more alarming, due to the size of population affected and the degree of challenge caused to the public's psychological endurance and confidence in the social ethnics and administration of the nation. Most of all, these problems concern nearly every Chinese citizen's well-being and impact on their personal prosperity, as well as the prosperity of the nation as a whole. These problems are mainly associated with failures in environmental protection, food safety, and medical security.

8.1 Human Rights and Environmental Protection⁸

Achieving modernization has been the core economic objective and a solemn promise of the Chinese government.⁹ Urbanization has been a major means of reaching this goal. This course has been accelerated since the 1990s with an average urban population growth rate of more than 3.4%.¹⁰ Nowadays, the number of urban population has reached 7711.6 million, account for 56.1% of the total population of the nation.¹¹ In the meantime, China has scored an extraordinary GDP growth rate ranging from the lowest 6.8% to the highest 13% between 1991 and 2014.¹² If these are to be seen as modernization or development, the modernization or development

⁷The white papers of the following years refer to: Progress in China's Human Rights in 1995, Progress in China's Human Rights in 1996, Progress in China's Human Rights in 1998, Progress in China's Human Rights in 2000, Progress in China's Human Rights in 2003, Progress in China's Human Rights in 2004, Progress in China's Human Rights in 2009, Progress in China's Human Rights in 2012, Progress in China's Human Rights in 2013, Progress in China's Human Rights in 2014, Progress in China's Human Rights in 2015.

⁸Since Chapter Six and Chapter Seven have generally explored some environmental issues in China, the discussions in this section will merely focus on the impact of environmental deterioration on human rights.

⁹The central content of modernization usually refers to the "four modernization", *i.e.*, modernization of agriculture, industry, national defense, and science and technology.

¹⁰This rate is higher than the world average growth rate and also higher than that of other regions apart from South-East Asia. See Editor, *Urbanization in China*, Wikipedia, at <https://en.wikipedia.org/wiki/Urbanization_in_China>.

¹¹See Dan Sun, "The National Bureau of Statistics of China: The Urbanization Population Rate Achieves 56.1% in 2015", *China Economic Net* (January 19, 2016), at <http://www.ce.cn/xwzx/gnsz/gdxw/201601/19/t20160119_8371558.shtml>.

¹²See the National Bureau of Statistics of China, "National Data – Annual – National Accounts – Gross Domestic Product", available at <<http://data.stats.gov.cn/english/easyquery.htm?cn=C01>>.

comes at a heavy price. Today's China has become the largest emitter of greenhouse gases and the air quality of many of its major cities fails to meet international health standards. It is reported that in some areas of Northern China, environmental deterioration is cutting short locals' life expectancy by 5 years.¹³ Air pollution, water contamination and shortage, as well as diminution of farmland have all reached an alarming level, causing wide public discontent which in turn sparks social instability and impairs China's international standing. According to research, environmental degeneration costs China around 3 to 10% of its gross national income (GNI) or about 3.5% of its GDP.¹⁴ Nowadays, environmental degradation poses serious threat to Chinese people's health, quality of life and economic development, which in turn, deprives Chinese people's human rights in many ways.

8.1.1 *Environmental Deterioration*

Any deleterious or undesirable change or disturbance to the environment may cause environmental degradation, including depletion of resources such as air, water and soil; the destruction of ecosystems and the extinction of wildlife.¹⁵ According to a UN investigation, poverty, infectious disease, and environmental degradation are identified as a major threat to international security in the twenty-first century. In the report on the investigation entitled: *A More Secure World: Our Shared Responsibility*, A threat to international security is defined as "any event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system".¹⁶ It is pointed out that poverty, infectious disease, and environmental degradation constitute economic and social threats challenging the international community as a whole.

The report goes further to highlight the linkage between environmental degradation and the dramatic increase in natural disasters in the past five decades. Merely in the period between 1993 and 2003, climate change caused flooding, heat waves,

¹³ See Yuyu Chen, Avraham Ebenstein, Michael Greenstone and Hongbin Li, "Evidence on the impact of sustained exposure to air pollution on life expectancy from China's Huai River policy" 110 (32) *Proceedings of the National Academy of Sciences of the United States of America* (2013) 12936–12941.

¹⁴ See Eleanor Albert and Beina Xu, "China's Environmental Crisis", Council on Foreign Relations (July 4, 2016), <<https://www.cfr.org/background/chinas-environmental-crisis>>.

¹⁵ See D L Johnson, S H Ambrose, T J Basset, M. L. Bowen, D E Crummey, J S Isaacson, D N Johnson, P. Lamb, M. Saul and A. E. Winter-Nelson, "Meanings of Environmental Terms", 26 (3) *Journal of Environmental Quality* (1997) 581–589.

¹⁶ See UN Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (2004) 2, available at <http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf>.

droughts and storms, deforestation, desertification, etc., affected more than two billion people and the economic toll multiplied compared with the previous decades.¹⁷

This trend has an even acuter presentation in China. In the past three decades, China experienced extraordinary economic growth, accompanied by rapid industrialization and urbanization. The emergence of many city clusters has resulted in centralized and condensed population in urban areas. The economic development, together with urbanization, has generated substantial environmental problems. Nowadays, China is facing nearly all of the world's ecological challenges including climate change, desertification, deforestation, declining water resources, acid rain, soil erosion, air and water pollution and biodiversity loss.¹⁸ Apart from increasingly frequent natural disasters caused by climate change, air and water pollution has become a paramount concern to the general public, which is acutely perceived in their daily life. As mentioned in the beginning of this section, the cost of environmental degradation in China is massive and profound, from people's lifespan to economic toll.

8.1.2 How Environmental Problems Entail Human Rights Issues

The link between environment and human rights can be established on basis that physical environment is a precondition for living a life of dignity and worth. Good environment is a pre-requisite for the enjoyment of fundamental human rights.¹⁹ In China, for a long time, human rights violations and environmental degradation have not been treated by central and local governments as related issues and addressed in a coherent and integrated way. It has become evident that environmental protection and human rights are *prima facie* interrelated, interconnected, and mutually responsive, since they both serve the purpose of improving and sustaining the well-being of humanity.²⁰ Human well-being has a basic requirement for safe food, clean air and drinking water, safe shelter and protection from diseases.²¹ Human activities such as rapid industrialization and urbanization result in environmental degradation

¹⁷ See *ibid.*, at 26; see also World Meteorological Organization, "Timely Access and Response to Accurate Early Warnings Are Crucial for Minimizing Impacts of Natural Disasters", *Press Release*, available at <http://www.wmo.ch/web/Press/Press715_E.doc>.

¹⁸ See Jinghao Zhou, *Chinese vs. Western Perspectives: Understanding Contemporary China* (Lexington Books, Lanham, Md, 2014), p. 88.

¹⁹ See United Nations Environment Programme, *Human Rights and Environment*, available at <<http://www.unep.org/delc/HumanRightsandTheEnvironment/tabid/54409/Default.aspx>>.

²⁰ See Puneet Pathak, "Human Rights Approach to Environmental Protection" 07 (1) *OIDA International Journal of Sustainable Development* (2014) 18.

²¹ Avner Friedman, *Human Well-being and the Natural Environment: Research Challenges in Mathematical Sciences* (research report, Aug. 2010) 1, available at <<http://dimacs.rutgers.edu/SustainabilityReport/friedman8-26-10.pdf>>.

including rising of sea levels, air and water pollution, drought, flooding, which in turn, affects people at a large number.

At the international law level, the vital role that environment plays in guaranteeing individuals' fundamental human rights has been recognized at a much earlier time. The Stockholm Declaration of 1972, Nairobi Declaration of 1982, World Charter for Nature of 1980, Earth Summit of 1992, Johannesburg Conference on Sustainable Development of 2002, UN Conference on Sustainable Development of 2012 have all acknowledged the interdependence between environment and human rights by conveying the message that environment may lead to long term impact on humanity and violation of human rights.²² The Human Rights Council in its resolution 7/23 of March 2008 and resolution 10/4 of March 2009 focused specifically on human rights and climate change, pointing out that environment change impairs and undermines directly and indirectly the effective enjoyment of human rights.²³

Traditional international environmental laws commonly address environmental issues through creating and determining rights and obligations between states. Human rights laws, on the other hand, place individuals' rights at the center of the focus. The establishment of the linkage between human rights and environment enables individuals victimized by environmental degradation to seek remedy on human rights violation ground, which traditional environmental laws gives little focus.

It is unfortunate that in China's priority agenda, both human rights protection and environment protection have given way to economic development for quite a while. The link between environmental damage and human rights violation has not been articulately addressed either. Indeed, it is a high time for China to adopt a comprehensive, human rights based approach to formulate environmental policies for clarifying human rights obligation in environment protection and for identifying and promoting good practice in environment management.

There are signs that current central government shows the interest in considering human rights law enforcement as a means of achieving the purpose of environment protection. "Environment protection" have become hot words in China's political life since the 18th National Congress of the Communist Party of China (Nov. 8–14, 2012). In his keynote report in the opening ceremony, Hu Jin Tao, the President of China by then, emphasized the term "ecological civilization" for fifteen times. His

²²United Nations, *Declaration of the United Nations Conference on the Human Environment* (Stockholm, 1972); UN General Assembly, *Draft World Charter for Nature* (30 October 1980), A/RES/35/7; United Nations Environment Programme, *Nairobi Declaration on the State of Worldwide Environment* (Nairobi, 1982); Earth Summit, *Rio Declaration on Environment and Development* (Rio de Janeiro, Brazil, 1992); World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development and Plan of Implementation of the World Summit on Sustainable Development: the Final Text of Agreements Negotiated By Governments at the World Summit on Sustainable Development* (September 2002, Johannesburg, South Africa); and The United Nations Conference on Sustainable Development, *The Future We Want* (Rio de Janeiro, Brazil, 2012).

²³Human Rights Council, *Human Rights Council Resolution 7/23 on Human Rights and Climate Change* (28 March 2008); and *Human Rights Council Resolution 10/4 on Human Rights And Climate Change* (25 March 2009).

successor, the current president Xi Jin Ping, in his speeches at the National People's Congress 2015 and at the Chinese People's Political Consultative Conference 2015, called for environment protection and pointed out that protecting environment is as important as protecting productive forces.²⁴ With the initiative from top leaders, the governments of all levels have become more and more mobilized to change their focus and give particular importance to environment protection. Although the areas like Beijing, Hebei and Shanxi are still frequently blanketed by hazardous smog and problems caused by environmental degradation and climate change are still acute, people are more willingly to adopt an optimistic attitude when speaking likely environmental improvement in the coming decades.

8.2 Human Rights and Food Safety

Nowadays, with the growth of economic prosperity, common Chinese people enjoy an ever-abundant supply of food products and are keen to broaden their dining experiences. In today's China, eating occupies nearly all occasions and businesses. Visitors to China are likely to find that eating is arranged as a highlight for them by the hosts. Some research suggests that the current food consumption pattern in China even poses as an exception to Engel's Law, that is: as the income of an average Chinese family rises, the proportion of income spent on food increases, rather than decreases.²⁵ Some other research finds that in fact, the share of Chinese households' income spent on food fell from over half in the 1970s to about one-third nowadays.²⁶ Nevertheless, one-third of household income being spent on food is still spectacularly excessive, compared with 6.7% in the U.S., 9.3% in the U.K., and 6.7% in Singapore.²⁷

While all levels of the population take any possible opportunities to indulge with feasts, disturbing facts concerning food safety emerge. This article concerns itself with some of the most severe problems associated with food safety in China, which mainly refer to the cases involving deliberate contamination of food for profits. These include problems such as manufacturing and trading imitation food (e.g., selling pork as beef), processing and selling contaminated food, adding chemical additives into food products for improving visual appeal, taste, or simply for falsely

²⁴Yunpeng Li, "Xi Jin Ping: Protecting Environment Is as Importance as Protecting Productive Forces", *Xinhua News Agency* (the News Center of the National People's Congress of China and the Chinese People's Political Consultative Conference), <http://news.china.com.cn/2015lianghui/2015-03/08/content_34987348_2.htm>.

²⁵Eugene N Anderson, *The Food of China* (Yale University Press, New Haven-London, 1988), p. 245.

²⁶Fred Gale and Shida Henneberry, "Markets Adapt to China's Changing Diet", 24(2) *The Magazine of Food, Farm, and Resource Issues* (2009) 32.

²⁷USDA – Economic Research Service, "Percent of Consumer Expenditures Spent on Food, Alcoholic Beverages and Tobacco that Were Consumer at Home, By Selected Countries, 2013" (October 1, 2014), <www.ers.usda.gov/data-products/food-expenditures.aspx#.VBgf5ZSSyux>.

increasing nutritional value (e.g., adding melamine into baby formula to inflate the protein levels), and producing and trading tainted food (e.g., profiting from recycled oil mainly dredged up from restaurant gutters).²⁸ Worst of all, the above problems are not sporadic but are widespread and rampant, and in some cases, systematic. It needs to be borne in mind that the above issues are the most severe ones and only account for a small part of the avalanche of food scandals. Here, incidents relating to sanitation or foodborne illness outbreaks caused by negligence in manufacture and service processes are not taken into account, though they are also serious problems.

The right to safe food is a basic human right for all individuals.²⁹ In addition, safe food should be regarded as an issue of national security for the reason that toxic food poses a serious threat to public health, which in turn leads to destructive social and economic consequences, and eventually has an adverse impact on the national interests of a country. It is high time for the Chinese to review their policies and strategies in dealing with social issues, including social justice, equal distribution, anticorruption and clean governments, social ethics and public morality, and public psychology. Regulation is surely a necessary instrument to control illegal conduct. However, given the fact that policies and laws are always watered down or compromised in implementation, it is thus particularly important for policy makers to take all the above issues into consideration when shaping the nation's regulatory infrastructure for food safety. When serious food problems have a devastating impact on a large proportion of the population, it is necessary to assess the situation from a human rights perspective while searching for solutions. This section examines China's food safety issues in connection with human rights awareness in the country. It investigates the social, political and cultural causations of the food scandals, and explores possible solutions.

8.2.1 The Current Regulatory Framework for Food Safety in China and Its Ineffectiveness

Before the 1980s, under the planned economy, food problems that arose from manufacturing were extremely rare and the regulatory focus was on sanitation occurring in the service and consumption processes, where the food safety administration was part of the duties of the sanitation and anti-epidemic departments. In 1964, the State Council promulgated the *Trial Regulations on Food Hygiene*. The law emphasized

²⁸ See Eleanor West, "5 Food Safety Problems in China: Weird Food Safety Headline Stories from China", *Food Republic Newsletter* (September 2, 2011), <www.foodrepublic.com/2011/09/02/5-food-safety-problems-china>.

²⁹ See *Universal Declaration of Human Rights*, art. 25, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (10 Dec. 1948); *International Covenant on Economic, Social and Cultural Rights*, art. 11, (16 Dec. 1966), S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

self-discipline and introduced methods of monitoring and insuring food safety, which were soft-law approaches in nature.³⁰

With the commencement of economic reforms carried out in the late 1970s, food products of increasing quantity and variety flooded China's domestic markets. It was thus necessary for the country to introduce relevant laws to regulate the food market. Consequently, a series of laws, regulations and administrative rules were enacted, including the *Law of the People's Republic of China on Product Quality 1993* (amended in 2000); the *Food Hygiene Law of the People's Republic of China 1995*; the *Regulations on the Control of Agricultural Chemicals 1997*; the *Ordinance on Pig Slaughtering Management 1997*; the *Regulations on Administration of Veterinary Drugs 2004*; the *Administrative Measures on Food Advertisement 1993*; the *Administrative Measures on Bio-Safety Agricultural Products 2002*; the *Administration Measures for Genetically Modified Food Hygiene 2002*; and the *Administrative Measures on Qualification Accreditation of Food Inspection Agencies 2010*.³¹ Although it appeared that a legal framework was largely put into place, the food industry was, in fact, less effectively regulated, due to the loose context of the laws and the gaps between the laws and their practice.³²

The situation has deteriorated since the beginning of the new millennium with the introduction of the practice of quality inspection exemption or the regime of self-inspection by enterprises themselves, an initiative launched to reduce the operational costs of food enterprises.³³ The self-inspection regime was a result of the administrative authorities exercising their supervisory powers in an abusive manner while in the discharge of their quality control duties concluding with the imposition of unnecessary and excessive burdens on food producers.³⁴ However, instead of disciplining administrative conduct, the policy makers opted for a compromise by abolishing food quality inspection. Research has shown that the managerial costs in Chinese firms are chiefly caused by defects inherent in the governance of these firms.³⁵ Without fundamental improvements in the corporate governance system,

³⁰ See *Trial Regulations of the People's Republic of China on Food Hygiene*, the State Council of the People's Republic of China, §§ 2–6 (1965).

³¹ The English versions of some of these laws and regulations can be found at the following web sites: <www.lawinfochina.com/display.aspx?id=615&lib=law>; <www.asianlii.org/cn/legis/cen/laws/fhlotproc392/fhlotproc392.html>; <www.asianlii.org/cn/legis/cen/laws/rotcoac491/rotcoac491.html>; <www.law-lib.com/lawhtm/1997/366.htm>; <www.ivdc.gov.cn/English/RegulatoryInformation/Legislation/201009/t20100903_34368.htm>; <www.saic.gov.cn/fldyfbzdzj/zcfg/200705/t20070523_57763.html>; <www.hnagri.gov.cn/web/kjjyc/zcfg/content_77918.html>; <www.lawinfochina.com/display.aspx?lib=law&id=2300>; <www.lawinfochina.com/display.aspx?lib=law&id=8276&CGid=>. Where the English version was unavailable, the author has provided links to the text in Chinese.

³² Wenhua Xu, "A Study of China's Legal System for Food Safety", *China Law Net* (May 9, 2012), <http://xuwenhua.66law.cn/lawyer_viewlawarticle.aspx?id=7542>.

³³ The mechanism was introduced by the *Decision of the State Council on Some Issues concerning Further Enhanced Product Quality* in Dec. 1999.

³⁴ Xu, *supra* note 32.

³⁵ See, for detailed discussions on managerial costs and corporate governance in Chinese firms, Yuwa Wei, "Directors' Duties under Chinese Law – A Comparative Review", 3(1) *University of*

the costs are likely to continue to inflate. Later instances of food safety crises have proven that those who maintain the argument that relaxation in quality control can reduce food companies' operational costs are simply barking up the wrong tree, where the most likely result is noncompliance.

It took the government 8 years to realize that giving enterprises free rein in regards to food quality control was an unwise decision. It was at least partly responsible for the current culpable culture in the food industry. In the aftermath of a series of food scandals, policy and regulatory mechanisms have been introduced as the main crisis control efforts. On February 28, 2009, *China's National People's Congress Standing Committee* passed the first comprehensive *Food Safety Law* for the nation. The *Law* took effect on June 1, 2009. On April 24, 2009, the State Council published the first set of implementation regulations relating to the *Food Safety Law*. On June 10, the *Ministry of Health* issued the *Measures on Recording Enterprise Food Safety Standards*. The new laws have raised safety standards, increased punishments, and instituted a system of risk evaluation. Responsibility for food safety is divided among the *General Administration of Quality Supervision, Inspection and Quarantine*, the *State Food and Drug Administration*, and the ministries of health, agriculture, commerce, and industry.³⁶

The current law imposes full responsibility on food producers and manufacturers to ensure that their products meet safety standards throughout each process, including purchase of raw materials, production, storage, package, transport and delivery.³⁷ In addition, they need to faithfully record the safety management throughout the whole course. However, China's experiences reveal that without fierce scrutiny, the industry is unlikely to comply with such requirements. Under the current regime, the supervision and administration are given to local governments at or above the county level, who formulate annual plans for food safety and undertake food sampling inspection.³⁸ Specific branches of government, including the departments of agriculture administration, quality supervision, industrial and commerce administration, and the food and drug administration carry out the routine work of food sampling inspection.³⁹

New England Law Journal (2006) 31–56; and see also, Yuwa Wei, *Comparative Corporate governance: A Chinese Perspective* (Kluwer, London, 2003), pp. 109–121.

³⁶ *The Law of the People's Republic of China on Food Safety*, the People's Congress of the People's Republic of China, §§ 27, 28, 40, 41, 57–61 (2009), an English version is available at <www.cofepris.gov.mx/AZ/China/revisión%202009.pdf>.

³⁷ *The Regulation on the Implementation of the Food Safety Law of the People's Republic of China*, the State Council of the People's Republic of China, § 3 (2009), an English version is available at <www.fdi.gov.cn/1800000121_39_4037_0_7.html>. The section states: "The food producers and traders shall, in accordance with laws, regulations and food safety standards, carry out productive and operational activities, establish and improve the food safety management system and adopt efficient management measures to ensure food safety. The food producers and traders shall be responsible for the safety of produced and trade food themselves as well as society and the public, and also bear social responsibility."

³⁸ *Ibid.*, at § 47.

³⁹ *Ibid.*, at § 48.

Persons with direct responsibility in the above mentioned governments are subject to disciplinary punishment comprising of the recording of serious demerits, demotion, dismissal or expulsion, in the event of a failure to perform their supervisory and administrative duties, particularly where the failure causes a serious social effect.⁴⁰ The same penalties are imposed directly on persons responsible for the above mentioned government branches, in the case where negligence is committed, daily supervision and inspection of food samples are omitted, abuse of power occurs, or favouritism is shown in the supervisory and administrative processes.⁴¹

From the above overview of the new regulatory regime, a few inadequacies can be identified. First, the legal (regulatory) framework is far from comprehensive. The supervisory model of food safety mapped out in the new laws can be summarized as: relying mainly on the segment-based approach, supplemented by a category-based approach.⁴² In other words, the administration of food quality is undertaken by multiple inspection and administrative agencies, exercising their authorities in different stages of food production and services and targeting different types of foods.⁴³ Such an arrangement poses a potential risk in regards to conflict of powers, though the new laws allude to the benefits of efficient coordination among these agencies by identifying their authorities and duties in different stages of production and services.⁴⁴ Given the gaps in the existing laws, it is very likely that China will encounter further challenges in food supervision caused by its inefficient administrative system. Speaking from a broader perspective, China is not the only country

⁴⁰Ibid, at § 61. The section provides: “Where the local people’s government at or above the county level fails to perform the legal duty of food safety supervision and administration so that in the administrative region occurs a major food safety accident, which has caused serious social effects, punishments include recording a serious demerit, degrading, dismissing or expelling shall be imposed on directly responsible persons-in-charge and other directly responsible persons by law. Where the departments at or above the county level of health administration, agriculture administration, quality supervision, industrial and commercial administration management and food and drug supervision and administration or other relevant administrative departments fail to perform the legal duty of food safety supervision and administration, lack daily supervision and inspection or abuse authority, neglect their duties and play favouritism and commit irregularities, the punishment of recording a serious demerit or degrading shall be imposed on directly responsible persons-in-charge and other directly responsible persons by law; if serious consequences are caused, the punishment of dismissing or expelling the person shall be given, and the main responsible person shall take the blame and resign.”

⁴¹Ibid.

⁴²Haopeng Su, “Reflections on China’s Food Safety Administration”, 2 *Journal of Political Science and Law* (2010) 83 <<http://wenku.baidu.com/view/d0ecd7b81a37f111f1855b87.html>>.

⁴³The Ministry of Agriculture (and its subsidiary departments at and above the county level) concentrates on the farm processing stage, while also watching over some categories of food at the processing stage. The Ministry for Industry and Commerce and its relevant subsidiaries mainly target the food marketing stage and also keep an eye on certain categories of food in their processing and consumption stages; the Ministry of Health and its subsidiaries mainly focus on the food consumption stage and has a say on certain categories of food in their processing stage; the General Administration for Quality Supervision, Inspection and Quarantine targets food at the processing stage and in cases of import and export, the food entry and exit stages.

⁴⁴The State Council of the People’s Republic of China, *supra* note 37, §§ 5–14, 20, 34, 43.

that has applied a multi-agency approach to food supervision and administration. The United States and Japan have also adopted a scheme of assigning duties of food administration to multiple governmental agencies and departments.⁴⁵ However, their comprehensive and detailed stipulations on division of responsibilities, quality standards, transparency and public scrutiny have ensured effectiveness of the system and smooth coordination among the agencies. Moreover, it is noteworthy that even in countries such as the United States, there are increasing calls for combining their multiple agencies into a single agency to further the operational efficiency.⁴⁶ It is therefore necessary for China to improve its food safety administration system to further enhance its regulatory regime on the one hand, and to rationalize the administrative chains and procedures in food supervision on the other.

Second, the current legal regime does not provide sufficient remedies for victims of food safety, nor does it effectively encourage consumer and community participation in food safety control. The laws have introduced monetary remedies for consumers consisting of damages and a fine of ten times that of the commodity's value. However, the accused are liable for the fine only where evidence shows that they have produced defective products and are at fault.⁴⁷ What is more outrageous is that the onus of proof is on the consumers in such cases.⁴⁸ The amount of ten times the value of the goods has already been criticized as being too insignificant to be a deterrent.⁴⁹ The requirement that consumers need to prove the culpability of producers in making defective foods renders it nearly impossible for the consumers to benefit from the fine, not to mention the conceivable negligible impact that the provision has on food producers.

Third, the regulatory regime has loopholes and demonstrates too much leniency towards liable producers and traders, as well as those administrative personnel who fail to discharge their duties or show favoritism. Among government staff of relevant departments, only those directly responsible for administrative negligence or abuse of powers that result in serious social impact may face disciplinary action.⁵⁰ Criminal penalties imposed on food producers for breaches of the law are also weak. Moreover, no single criminal penalty is available to penalize delinquent public servants. The *Criminal Law of China* only punishes the conduct of producing

⁴⁵For instance, in the U.S., the powers of food administration are divided amongst the U.S. Department of Agriculture, the Food and Drug Administration and the Environmental Protection Agency.

⁴⁶See Chamus Burnside-Savazzini, "Training in an Integrated Food Safety System: Focus on Food Protection Officials", *Food Safety Magazine* (April/May 2011), <www.foodsafetymagazine.com/article.asp?id=4018&sub=sub1>.

⁴⁷The People's Congress of the People's Republic of China, *supra* note 36, § 96.

⁴⁸The Food Safety Law does not address the issue of burden of proof. Hence, the rules of general law apply, rendering that the burden of proof lies upon he who brings the claim.

⁴⁹See Tonghai Liu, "On the Shortcomings of the Food Safety Law and Some Suggestions on Improvement", *Blog of Tonghai Liu on Legal Study Net* (October 10, 2011), <<http://wq.zfwlxt.com/newLawyerSite/BlogShow.aspx?itemTypeID=fd950ea-312b-4519-91ea-9bfb01037315&itemID=de914f78-54bd-4f50-9bdc-9f80015e3473&user=9947>>.

⁵⁰The People's Congress of the People's Republic of China, *supra* note 36, § 61.

and selling foods causing serious food poisoning and diseases, and the conduct of producing and selling foods mixed with toxic or harmful non-food substances.⁵¹ It can thus be observed that the scope of application of the criminal law provisions is limited to offences occurring in food production and sale. This leaves the conduct of processing, packaging, storing and transporting defective or harmful foods unpunished.⁵² Furthermore, the amounts of the penal fines provided in the *Criminal Law* are even less than those stipulated in the Food Safety Law, and are subject to a higher threshold in application.⁵³

Finally, the most essential issue to be addressed by the Chinese is the enforcement of the laws. According to a survey carried out by the National Survey Research Center at Renmin University of China in 2011, 68% of people interviewed attributed the cause of food scandals to administrative inefficiency and supervisory failure.⁵⁴ In the meantime, judicial failure to rigorously implement food laws has cast a further shadow over effective law enforcement in the future. It is reported that courts are reluctant to support consumers' claims for damages up to 2 or 10 times the amount of the commodity price provided for in the *Law of the People's Republic of China on the Protection of Consumer Rights and Interests 1993* and the *Food Safety Law of the People's Republic of China 2009*.⁵⁵ Many manufacturers also promise

⁵¹The *Criminal Code of China* states: "Whoever produces or sells food that does not conform to hygiene standards in a manner that is sufficient to cause a serious food-poisoning accident or any serious disease caused by foodborne bacteria shall be sentenced to fixed-term imprisonment of not more than 3 years or criminal detention, and concurrently or independently be sentenced to a fine of not less than half of the sum obtained through sale and not more than twice of that. If the offence causes serious harm to human health, the offender shall be sentenced to fixed-term imprisonment of not less than 3 years and not more than 7 years, and concurrently be sentenced to a fine of not less half of the sum obtained through sale and not more than twice of that. If the consequences are especially serious, the offender shall be sentenced to fixed-term imprisonment of not less 7 years or life imprisonment, and concurrently be sentenced to a fine of not less than half of the sum obtained through sale and not more than twice of that or confiscation of property." A person who knowingly mixes the food to be produced or sold with toxic and harmful non-food stuffs is subject to the same penalties. The *Criminal Law of People's Republic of China*, the People's Congress of the People's Republic of China, §§ 143, 144 (1979).

⁵²Ibid.

⁵³See Jing Liu, "Studies on Issues Concerning Food Safety in Criminal Law", *Legal Study News of the Capital City* <www.bjfxh.org.cn/fxwww/zzjs/FxzzWebsiteAction.do?action=recommended_detailview&JHCOMMENDEDEDID=623>.

⁵⁴Yuanshan He and Chao Chen, *Food Safety and Effective Supervision by the Government*, 7 *GLOBAL BUSINESS & FINNANCE* (2013) 26, <www.cqvip.com/QK/84344X/201307/46470385.html>. Additional information on the National Survey Research Center at Renmin University of China may be found at their English language website: <<http://nsrc.ruc.edu.cn/en>>.

⁵⁵Article 96 of the *Food Safety Law of the People's Republic of China 2009* states: "When any manufacturer produces any food not conforming to the food safety standards or sells any food knowing its nonconformity with the food safety standards, the customer can demand the manufacturer or the seller to pay a penalty 10 times of the paid amount, in addition to the compensation for the loss thereof." The amount of the compensation provided for in Article 49 of the *Law of the People's Republic of China on the Protection of Consumer Rights and Interests 1993* is up to two times upon occurrence of fraud. Junhai Liu, the Deputy President of China Consumer Association pointed out that due to judges' misunderstanding of legal reasoning, consumers'

that an amount of compensation of up to 10 times the amount of the commodity price will be paid to consumers upon violation of food safety. However, such claims are likely to be rejected by courts. Some judges insist that such an amount appears to be punitive and thus does not have legal basis in contractual relations. The stance of courts in such cases renewed the public's suspicion of judicial corruption. The worst scenario concerns events involving arrest and conviction of consumer advocates. The Zhao Lianhai case is a typical example. Zhao Lianhai was a man who became an activist after his son experienced kidney problems linked to contaminated baby formula. He was convicted of inciting public disorder by setting up a web site to help other parents with sick children share information, seek compensation, and organize protests.⁵⁶

It is clear that despite legislative efforts, tackling the food safety problem is an overwhelming challenge. Compared to assessing legislative improvements, evaluating law enforcement in China presents a far more demanding task and is entangled with a number of social, political, economic and cultural issues. More discussions on enforcing food safety law in China will be carried out in Section III of this article.

In summary, much work needs to be done to develop an efficient and effective food safety regulatory regime. This is not a mere legal task, but a social project involving reform of the administrative culture, a change in the business environment and transformation of the perception of the right to safe food for the public.

8.2.2 How Food Safety Problems Entail Human Rights Issues

Human rights are rights inherent to all human beings, and they are inalienable and fundamental.⁵⁷ The international community has reached a common understanding on the universality of human rights. For promoting and protecting human rights and fundamental freedoms of individuals, governments are obliged to act in certain ways or to refrain from specific acts.⁵⁸ The most common universal human rights

claims for compensation provided in the above provisions are rarely supported by courts in the past. See, Bin Zhou, "Comments on Selected Consumption Cases", *Legal Daily* (March 17, 2007), <www.legaldaily.com.cn/bm/content/2009-03/17/content_1054719.htm>

⁵⁶The Decision of Daxing District Court of Beijing (10 Nov. 2010), DXCZ No. 318, <http://blog.sina.com.cn/s/blog_5b4558100100n0as.html>. See also Keith B Richburg, "Chinese Baby Formula Activist Sentenced to 2 1/2 Years in Prison for Incitement", *The Washington Post* (November 10, 2010), <www.washingtonpost.com/wp-dyn/content/article/2010/11/10/AR2010111001988.html>.

⁵⁷See United Nations Office of the High Commissioner for Human Rights, "What are Human Rights?" (2012), <www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>.

⁵⁸Ibid.

include the rights to life, to freedom,⁵⁹ to good governments⁶⁰; and social, economic and cultural rights. The right to food as a human right was recognized by the first international declaration on human rights – the *Universal Declaration of Human Rights* in 1948,⁶¹ and was affirmed in the *International Covenant on Economic, Social and Cultural Rights* 1966 and other documents including the *Convention on the Elimination of All Forms of Discrimination* against Women and the *United Nations Convention on the Rights of the Child*.⁶² Under the *International Covenant on Economic, Social and Cultural Rights* 1966, the right to food is recognized as part of the right to an adequate standard of living.⁶³ The *Rome Declaration on World Food Security and World Food Summit Plan of Action* 1996 reaffirms everyone's right to "have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger" and describes food security as: "[W]hen all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life."⁶⁴

It is therefore clear that as a part of human rights, the right to food is inalienable and indivisible from other fundamental rights including the right to life, the right to health, the right to know,⁶⁵ and the right to a clean, healthy environment. It is

⁵⁹ International Covenant on Civil and Political Rights, art.6 – right to life, art. 8 – right to freedom, and art. 25 – right to citizenship, (16 Dec. 1966), S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999. U.N.T.S. 171.

⁶⁰ "[I]nternational human rights law protects a wider scope of rights to good governance . . . This suggests an implicit international consensus on key principles of good governance, even if the term 'good governance' is not explicitly used." Jahanna Jokinen, *International Legal Instruments Addressing Good Governance* (Report of United Nations Human Settlements Programme, 2002), <www.eukn.org/E_library/Social_Inclusion_Integration/Community_Development/Community_Development/International_Legal_Instruments_Addressing_Good_Governance>.

⁶¹ Article 25 of the *Universal Declaration of Human Rights* states "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

⁶² See *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), (18 Dec. 1979), 1249 U.N.T.S. 13; *Convention on the Rights of the Child*, (20 Nov. 1989), 1577 U.N.T.S. 3.

⁶³ Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* 1966 states "the right of everyone to an adequate standard of living for himself and his family, including adequate food" and article 11.2 states "the fundamental right of everyone to be free from hunger."

⁶⁴ Food and Agriculture Organization of the United Nations, *The Rome Declaration on World Food Security* 1996 and *World Food Summit Plan of Action*, UN Doc. WFS96/3, *World Food Summit*, (13–17 Nov. 1996, Rome).

⁶⁵ Here, "right to know" is a term used in environmental law, referring to the legal principle that the individual has the right to know the chemicals to which they may be exposed in their daily living. It comprises two aspects – Community Right to Know (environmental hazard information) and Workplace Right to Know (workplace hazard information). Nowadays, the term is used in the field of human rights in reference to the right of access to information concerning citizens' human rights, or their rights under freedom of information laws. For instance see Sandra Coliver, *The*

justifiable to say that the right to food incorporates at least the following dimensions: availability, accessibility and adequacy.⁶⁶ In other words, food must not only be available as a resource and affordable in order for people to be able to satisfy their dietary needs, but must also be safe for human consumption and free from contaminants. Everyone must have access to food that is not only nutritionally adequate, but also free from harmful substances, so that it does not endanger people's lives or health.

The states parties to the *International Covenant on Economic, Social and Cultural Rights* 1966 have agreed to assume the obligation to progressively realize the right to adequate food. The responsibility is interpreted by the *Committee on Economic, Social and Cultural Rights* as comprising three types of obligations: respect, protect and fulfil/facilitate.⁶⁷ A state government must not interfere with individuals' efforts to access food.⁶⁸ It must also protect its people from infringement of their right to adequate food by others. The government should help those who do not already enjoy the right to food by creating opportunities for them to provide for themselves. In the case where people are unable to enjoy the right to food due to events out of the individuals' control (natural disaster for example), the government ought to provide food to them directly.⁶⁹

China is a signatory of the *Universal Declaration of Human Rights* and a contracting party of the *International Covenant on Economic, Social and Cultural Rights* 1966, the *Convention on the Elimination of All Forms of Discrimination against Women* 1979 and the *United Nations Convention on the Rights of the Child* 1989. China also signed the *International Covenant on Civil and Political Rights* 1966 but has yet to ratify it.⁷⁰ The government of China is under international obligation to facilitate a pre-warning system regarding threats to the right to adequate food, and to improve coordination between different government and food safety agencies, as well as improve their accountability. Violation of the right to food refers

Right to Know: Human Rights and Access to Reproductive Health Information (Article 19 – University of Pennsylvania Press, London- Philadelphia, 1995); and Jacqueline Klosek, *The Right to Know* (Praeger, Westport, 2009). Article 19 of the *Universal Declaration of Human Rights* states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

⁶⁶ Jean Ziegler, "What is the Right to Food?", *Right to Food* (August 6, 2012) <www.webcitation.org/68CmSsTIC>.

⁶⁷ See the Committee on Economic, Social and Cultural Rights (CESCR) (Twentieth Session, 1999), General Comment No. 12 on the Right to Adequate Food, U.N. Doc. E/C.12/1999/5 (1999).

⁶⁸ Olivier de Schutter, *Interim Report of the Special Rapporteur on the Right to Food* (August 7, 2013), para. 6 <<http://ghum.kuleuven.be/ggs/events/2013/srrtf-reporta-68-288-final.pdf>>.

⁶⁹ *Ibid.*, at para. 17.

⁷⁰ Although China has not ratified the *International Covenant on Civil and Political Rights* 1966, its signature does trigger an obligation in the period between signature and ratification to refrain in good faith from acts that would defeat the object and purpose of the Covenant. The *Vienna Convention on the Law of Treaties*, art. 18, 23 May, 1969, 1155 U.N.T.S. 331. See also Olivier Corten and Pierre Klein, *The Vienna Conventions on the Law of Treaties: A Commentary* (Oxford University Press, New York, 2011), pp. 398–399.

not only to shortage of food, lack of infrastructure, mal-distribution and inadequate access to food, but also to protection from contaminated and harmful food. Most of the recent food scandals in China involve rampant violations of the right to food in the dimension of adequacy – provision of food for safe consumption. While immoral and illegal conduct of individuals and enterprises is ultimately responsible for the outbreak of food safety crises, the government is accountable for inefficiencies in monitoring the enterprises and disciplining personnel in charge of administrating the food industry.

As the most populated country on the earth, the Chinese government has always paid great attention to food issues and regarded provision of enough food to the people as the first priority. After decades of effort, China has mostly solved the problem of feeding its people.⁷¹ However, new problems associated with agriculture and food have arisen since the commencement of market oriented reforms. It is reported that due to accelerated industrialization and urbanization, arable land has been shrinking and farmland capacity has declined.⁷² This constitutes a threat to China's future food security. The government has introduced the *National Land Consolidation Plan* (2011–2015) that aims to increase the effective area of arable land by 1.6 million hectares before 2015, though the enforcement of the *Plan* faces challenges such as lack of mechanisms for protection of cultivated land and inefficiencies in the management of land tenure rights.

It appears that China has made a significant effort to achieve food sufficiency in the country. Food availability and accessibility have been a top agenda item for the government in the past and will continue to remain a central issue in the future. The adequacy aspect received far less attention. The recent outbreak of food scandals is chiefly a result of a lack of oversight within the food industry. This can be partly attributed to the understaffing of supervisory authorities, partly to the misfeasance, malfeasance, nonfeasance and unprofessionalism of administrative officers. It is noteworthy that administrative personnel's unsupportive attitude and behavior towards businesses has been the cause of changes in inspective practice, resulting in a switch of models from official inspection to enterprise self-inspection.⁷³ Under the enterprise self-inspection regime, the working manner of administration is even more unprofessional. For instance, in the recycled buns case, when doing their sample inspection, the governmental inspectors, once arriving at a food factory or workshop, would only come into the administrative office and wait for the factory managerial staff to provide the samples to be examined. It is no surprise that they did not get any clues over the years.⁷⁴ In one of the clenbuterol contaminated pork

⁷¹ S Z Gu and Y J Zhang, "Food Security in China", in Sun Honglie and Shidong Zhao (eds.), *Area Studies – China: Regional Sustainable Development Review* (Vol. 1, 2009) 192, <www.eolss.net/Sample-Chapters/C16/E1-54-07.pdf>.

⁷² Editor, "Shrinking Arable Land Threatens Grain Security", *China Daily* (October 18, 2010), <www.chinadaily.com.cn/china/2010-10/18/content_11423618.htm>.

⁷³ Xu, *supra* note 32.

⁷⁴ Editor, "National Wide Investigation into Problematic Buns, Food Safety Face Trust Crisis", *Sina Net* (April 19, 2011), <<http://news.sina.com.cn/c/2011-04-19/152522320313.shtml>>.

incidents, the problematic pigs were sold from Henan pig farms to Jiangsu Province and had to go through several checkpoints conducted by the trade bureau, health inspection station, veterinary station, etc. However, some inspectors acted as middlemen between pig sellers and slaughterhouses for a commission of RMB10 Yuan per pig, which caused wide dissemination of the contaminated pork and pork products.⁷⁵

The recycled buns case showed workers in a filthy workshop “recycling” buns by throwing the stale buns into a vat, adding water and flour, and repackaging them to be sold anew. The clenbuterol contaminated pork case involves pig farmers feeding pigs with pig feed mixed with clenbuterol used to make the pigs have leaner bodies, which sell for a higher price. Other food scandals involve melamine-contaminated baby milk; pork sold as beef after it was soaked in borax; rice contaminated with cadmium, arsenic-laced soy sauce; popcorn and mushrooms treated with fluorescent bleach; bean sprouts tainted with an animal antibiotic; and wine diluted with sugared water and chemicals.⁷⁶ The alarming fact is that most of the food related offences were first discovered and disclosed by journalists, and not the personnel in charge of the surveillance authorities, or even the police or national security authority. It is inexcusable for administrative agencies to claim that ill-training, poor quality equipment and understaffing are the main causes for such an appalling incidence of food scandals in the country, since journalists are by no means in a position to be better trained and better equipped than food inspection agencies or police. As a matter of fact, detection and disclosure of food safety problems is not the expertise of journalists, nor their major business.

Respect for human rights is becoming a universal principle of good government.⁷⁷ This is because many human rights require activity on behalf of government. These activities relate to the duties to respect, protect and fulfil human rights in order to provide the conditions necessary for prosperity and well being of individuals.⁷⁸ A good government is committed to protection of the rule of law.⁷⁹ Hence, it is the state government’s responsibility to make good laws and to establish able, professional and corruption-free administrative institutions, with a public service team to guarantee the implementation of the laws. Although China’s government is quick in making legislative efforts to curtail misconduct in the food industry, it needs to demonstrate its determination and capability of ensuring that the laws are

⁷⁵ Editor, “CHINA – Pig Farmers Told to Drug Livestock”, *Benefiq’s Blog* (April 1, 2011), <<http://agrobeneq.wordpress.com/tag/clenbuterol/>>.

⁷⁶ Sharon LaFraniere, “In China, Fear of Fake Eggs and ‘Recycled’ Buns”, *New York Times* (May 7, 2011), <www.nytimes.com/2011/05/08/world/asia/08food.html?pagewanted=all>.

⁷⁷ Office of the United Nations High Commissioner for Human Rights, “Good Governance and Human Rights”, <<https://www.ohchr.org/en/issues/development/goodgovernance/pages/goodgovernanceindex.aspx>>. See Moira Rayner, “History of Universal Human Rights – Up To WW2”, <www.universalrights.net/main/histof.htm>.

⁷⁸ See Henk Addink, Gordon Anthony, Antoine Buyse and Cees Flinterman, *Sourcebook: Human Rights & Good Governance* (Asialink Project on Education in Good Governance and Human Rights, 2010) 112.

⁷⁹ Office of the United Nations High Commissioner for Human Rights, *supra* note 77.

fully abided by and it is accountable for building a law enforcement agency comprised of highly motivated, dedicated, well-trained law enforcers.

8.2.3 Building an Efficient Food Safety Control System in China

A typical national food control system comprises the following components: food law and regulation, food control management, inspection services, laboratory services and information, education, communication and training.⁸⁰ The capacity of food safety control in a nation is demonstrated by effectiveness, efficiency and sustainability. In China's case, apart from legislative efforts, much needs to be done in the following aspects:

8.2.3.1 Great Importance Should Be Attached to Law Enforcement

Law enforcement involves certain members of society acting in an organized manner to promote adherence to the law by investigating and punishing persons who violate the rules and norms governing that society. The enforcement of the law consists of a system comprised of the courts and procuratorates, the judicial and public security agencies, and the administrative agencies, with their descending hierarchy of departments, bureaus, sub-bureaus, and stations. With regard to enforcement of food laws and regulations, administrative mechanisms play a more substantial role, compared with other enforcement instruments. The key is to enhance food control management. This involves development of food control strategies, implementation of risk analysis, operation of a food control program, securing funds and allocating resources, and development of emergency response procedures.⁸¹

Development and implementation of food control strategy is concerned with defining food control objectives, identifying priorities of competing interests relating to public investment, state economic interest, food import and export, farmers and producers.⁸² An integral, effective food control strategy is particularly important to China, since it will improve the coherence of multiple existing administrative agencies in the country and reduce confusion, duplications of effort, inefficiencies in performance and waste of resources. For the time being, a crucial task China

⁸⁰Food and Agriculture Organization of the United Nations and World Health Organization, *Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems* (Joint FAO/WHO Publication) 6–9 (Rome 2003), <<ftp://ftp.fao.org/docrep/fao/006/y8705e/y8705e00.pdf>>.

⁸¹See Food and Agriculture Organization of the United Nations and World Health Organization, *supra* note 62, at 7.

⁸²*Ibid.*

faces is to consolidate its food control policy at the macro-level by standardizing food quality certification, management, and rating, and in the meantime, to improve the market price system. A market entry certification system should also be put in place.

Another important task to deal with is to establish a uniform food safety risk analysis scheme to ensure compliance with food regulations and standards.⁸³ Unlike developed countries, the food safety problems in China occur in every stage from food production to service, typically consisting of contamination of raw food materials, cross contamination in manufacture, improper storage and preservation, and unhygienic practices in services.⁸⁴ This requires a wide-ranging risk analysis system capable of identifying risk factors at every stage and of providing solutions. In doing so, there is the need to coordinate the risk assessment activities currently exercised by different administrative agencies and to develop a comprehensive scheme for food safety risk assessment, in which a professional team comprising food researchers, toxicological analyzers, pathological analyzers and inspectors play an essential role.

Attention should also be paid to food safety risk communication improvement. Insufficient food risk communication in the past was chiefly responsible for a crisis in customer confidence with China's food industry.⁸⁵ Until this point, no substantial improvement has been made in this regard. In summary, the flaws of this situation can be attributed to a lack of government guidance, silence on the part of scientific academia, and unreliability of entrepreneurs.⁸⁶ Addressing this issue, the Minister of Health recently announced that a plan for food safety risk communication was in development and the press was expected to continue to play a leading role in this aspect.⁸⁷ However, without access to channels for obtaining scientific information, the press's capacity for publishing fair and accurate reports is considerably undermined. It is therefore necessary to base risk communication on a system of interactive exchange of information and opinions among all stakeholders, including risk assessors, risk managers, consumers, industries, the academic community and other interested parties. This requires the government to allocate sufficient funds to finance and staff risk communication institutions of various specialities.

China has more than 200 million farmers and more than 500,000 food production companies.⁸⁸ Hence, to some, the food production system seems too vast to

⁸³ See World Health Organization/Food and Agriculture Organization of the United Nations, "About Risk Analysis in Food", <www.who.int/foodsafety/micro/riskanalysis/en/>.

⁸⁴ See China National Food and Safety Supervision and Inspection Centre, *China Is in Urgent Need to Introduce A Comprehensive Food Risk Analysis System*, China Certification and Accreditation Information Network (November 13, 2009), <www.cfqs.org/info/news_detail.asp?id=104>.

⁸⁵ Zheng Cui, "Suhe Meng's Opinion: Confidence Crisis is the Biggest Challenge to China's Food Products", *Caixin Net* (April 20, 2012), <<http://opinion.caixin.com/2012-04-20/100382560.html>>.

⁸⁶ *Ibid.*

⁸⁷ Zheng Cui, "The Minister of Health's Interpretation of Food Risk Communication and Expectation that the Media Play A Leading Role", *Caixin Net*, (April 22, 2012), <<http://china.caixin.com/2011-04-22/100251129.html>>.

⁸⁸ Editor, *Food Safety, VIV China* (September 23–25, 2012), <www.vivchina.nl/en/Exposant/About-VIV/Concept.aspx>.

allow for meaningful inspection at all stages of the food production process.⁸⁹ However, the establishment of a national database for food supervision and inspection and a platform for food safety risk assessment enabling all interested parties to follow the development of food safety will absolutely make a difference to China's food industry.

By the end of 2009, the Ministry of Health formed the *Expert Committee for National Food Safety Risk Assessment*, which was a significant step toward improvement of China's food safety control.⁹⁰ It is also reported that the State Council of China has revealed its intention to establish a database of food companies' safety records.⁹¹ According to the plan, companies with poor safety records will be black-listed and publicized, and will be subject to punishment.⁹² Better regulation mechanisms, legal and standard systems, as well as technical support systems will also be introduced to improve the overall food safety management level.⁹³ Now, the world is waiting to see how well the plan will be realized.

8.2.3.2 Promotion of a Clean, Able Food Inspection System

Improving inspection services for food safety control is another key element for enhancing the food safety control system in China. Food inspection service is a means of ensuring that the food supply is safe for consumers and meets legislative requirements. It is also an instrument for decreasing hazardous intoxicants in foods, including pathogenic bacteria, viruses and parasites, chemical contaminants and mycotoxins. The primary duty of the food safety inspection service is to inspect food manufacturing, processing and handling facilities, importing/exporting of foods and the monitoring of a company's facilities for compliance with the national legal and regulatory requirements.⁹⁴ In some countries, the food inspectorate also conducts the functions of investigating food poisoning and injury cases and fraudulent marketing practices, as well as handling consumer complaints.⁹⁵ The efficient functioning of the food inspection service very much depends on the effectiveness

⁸⁹Dan Harris, "China Food Safety, It Ain't Working and We Told You So", *China Business*, (April 4, 2011), <www.chinalawblog.com/2011/04/china_food_safety_it_aint_working_and_we_told_you_so.html>.

⁹⁰Fei Chen, "Good Advisor for Food Safety Supervision and Inspection: The Expert Committee for National Food Safety Assessment Was Established", *Health Daily* (December 12, 2009), <www.healthnews.com.cn/document.jsp?docid=106407>.

⁹¹Jin Zhu, "Food Safety Becomes National Priority", *China Daily* (July 5, 2012), <http://usa.chinadaily.com.cn/china/2012-07/05/content_15549901.htm>.

⁹²Ibid.

⁹³Ibid.

⁹⁴The Food and Agriculture Organization of the United Nations, *Multilateral Trade Negotiations on Agriculture – A Resource Manual/SPS and TBT Agreements – Module 7, National Food Control Systems: Components and Operation* (Rome 2000) <www.fao.org/docrep/003/x7354e/x7354e07.htm>.

⁹⁵Ibid.

of individual inspectors and the quality of their work. It is thus important to make sure that inspectors have detailed guidance and rules to follow when discharging their responsibilities. Their powers and the procedures to be followed should be well defined. Inspectors should receive up-to-date training in the new technologies used in processing and manufacturing, including what is required for the control of these technologies in order for them to function at maximum effectiveness and to assure proper performance. They must also be able to evaluate the performance of equipment and instruments used in production to guarantee that they are appropriately controlled and monitored.⁹⁶

The impotence of China's food safety inspectorate has been widely reported and acutely recognized by consumers. It is officially perceived that the food safety inspection administration suffers from insufficient resources, a lack of qualified personnel, and deficient coordination among layers of governments and among various institutions, particularly among those administrative agencies at the provincial level and below.⁹⁷ Apart from the above-mentioned vices, three more factors must be taken into account: corruption, shirking and laziness. China's public services have long suffered from a number of bureaucratic problems such as authoritarianism, routinism, elitism, corruption, shirking of responsibility, deceit, laziness, formalism, red tape, nepotism, seeking special privilege, overstaffing, duplication, ineffectiveness, and over-centralization.⁹⁸ Upon close study, one can discern that corruption, shirking and laziness are the most prominent problems that induce or exacerbate the other problems. These deep-rooted problems penetrate the food safety inspection system and eventually take their toll on public confidence in the food industry.

The government of China has pledged to enhance the ability of the inspectorate. In its *Food Safety Decision* June 23, 2012, the State Council announced that it planned to take 5 years to improve the nation's food safety and food control management.⁹⁹ According to the State Council's statement, food safety will become a measure of local governments' performance in their annual assessments, in the hope that incorporating food safety as one of the evaluation criteria will make local governments and officials aware of their responsibilities.¹⁰⁰ However, given the institutional decline, erosion of authority of the central government, and loss of control over local agencies and agents in the era of the market economy, effectively rooting out corruption in the food safety administration will certainly demand much

⁹⁶Ibid.

⁹⁷Editor, "Fifteen Organizations Share Responsibilities in Food Safety Supervision and Administration: Weak Supervision and Administration Cause Frequent Problems", *CCTV Half-Hour Economy* (May 29, 2011), <<http://news.qq.com/a/20110529/000081.htm>>, or <<http://2011lianghui.people.com.cn/GB/214392/14097181.html>>.

⁹⁸Kuotsai Tom Liou, *Managing Economic Reforms in Post-Mao China* (Praeger, London, 1998), p. 103.

⁹⁹*The Decision of the State Council about Further Strengthening Food Safety* (2012), The State Council of the People's Republic of China, <www.gov.cn/zw/gk/2012-07/03/content_2175891.htm>.

¹⁰⁰Chen, *supra* note 90.

greater efforts based on resolute determination. To a certain extent, it represents a social problem and needs to be tackled on a broader scale.

8.2.3.3 Promotion of Respect for Universal Human Rights, a Sense of Social Responsibility/Public Morality, and a Culture of Decency and Honesty

To curtail food safety problems on a broader scale, it is necessary to promote general respect for universal human rights in the society. From this point of view, improvement of food safety can be seen as a social project. In the past three decades, in making the transition from a planned economy to a market economy, China placed much emphasis on economic gains and profitability.¹⁰¹ Along with GDP growth, extreme utilitarianism, fickleness and mammonism have become more and more evident and have turned into a driving force in Chinese people's daily life.¹⁰² The food safety outbreaks are merely typical consequences of the erosion of social morality and business ethics. Food safety outrages spark a new round of calls to promote public morality and human rights.¹⁰³ Many Chinese have come to realize that without a morally healthy social environment, mere economic prosperity does not guarantee a successful society and true advancement. In contrast, it may only carry with it the seeds of corruption and decay.

To bring changes to the broader system, the general public needs to step out from their family-centred tradition and self-interested sphere, and endeavor to shape a society where individual equality is upheld, respect for others' human rights is generally aware of, and public interests are greatly valued. The construction of such a society requires the combined efforts of the government, private sectors and the community. While the government is accountable for formulating policies and initiatives, facilitating state agencies and mechanisms, and allocating resources, the business sector and the community are expected to participate in shaping a good society by promoting sustainable business practices, interacting with the government and influencing the policies of governance. It is worth noting that the Constitution of China only implicitly addresses citizens' rights to safe food. Article 21 provides that "The State . . . promotes health and sanitation activities of a mass character, all for the protection of the people's health"; and Article 45 states: "Citizens of the People's Republic of China have the right to material assistance

¹⁰¹ See Xinyan Wang, "A Reflection on the Circumstances of Contemporary Chinese Social Moral Ideal", Bureau of International Cooperation (May 27, 2003), <http://bic.cass.cn/english/infoShow/Arcitle_Show_Conference_Show_1.asp?ID=338&Title=The%20Roles%20of%20Values%20and%20>.

¹⁰² Ibid.

¹⁰³ See Wenbo Chen, "Food Safety and Public Morality", *China Culture and Media Daily Network* (May 13, 2011), <www.ccdy.cn/zgwhb/content/2011-05/13/content_893558.htm>. See also Liyan Li, "The Right Lists Tells How to Envisaging China's Human Rights Development", *People's Daily Online* (13 June 2012), <<http://opinion.people.com.cn/GB/18168695.html>>.

from the state and society when they are old, ill or disabled.”¹⁰⁴ Compared with some nations that incorporate the right to healthy food into their Constitutions, China is much behind in providing constitutional safeguards for food security.¹⁰⁵ Given the challenge of tackling food problems, it may be necessary for China to introduce provisions to protect food safety in the Constitution.

In the case of combating food safety problems, the food industry shares responsibility with governmental agencies in achieving the objectives of a national food control strategy. Involving the industry in national food control activities might be instrumental in overcoming potential problems. The food industry is responsible for the implementation of rules regulating agriculture, food manufacturing and processing practices, as well as a food quality and safety system.¹⁰⁶ The industry should also be obliged to educate and train all employees in food handling and make sure that they understand general food quality and safety system. It can also provide information to consumers through food labeling and advertising.¹⁰⁷ In China’s case, the food industry may need to go through a long journey to correct its practices which may also involve a change in the business culture.

As members of the community, consumers have a right to quality and safe food and also have responsibilities to prevent food related health hazards. Consumers need to understand there is no such thing as an absolutely safe food supply.¹⁰⁸ The right to food for consumers also requires a responsibility to play a role in food control. Consumers can actively contribute to food safety control by providing valuable information to the authorities, usually by complaining about product deception and poor quality and by reporting injury and illness caused by food.¹⁰⁹ The authority then needs to provide them with a channel to let their dissatisfaction be known. Consumer organizations are expected to play an important role in representing the consumer in the development of a national food control strategy and also in bringing the concerns of consumers to the attention of policy makers and the industry.¹¹⁰ The Chinese government needs to take proactive action in order to ensure that consumers are heard and taken into account.

In summary, combating food safety problems depends on a combination of mechanisms including training, business ethics education, administration and

¹⁰⁴ The People’s Congress, the *Constitution of the People’s Republic of China* 1982.

¹⁰⁵ For instance, Kenya, Mexico, South Africa and Switzerland have all embodied provisions concerning protection of food safety in their constitutions. See Article 27 of the *Constitution of the Republic of South Africa*, Act 108 of 1996; See also Schutter, *supra* note 68, at 5; Sibonile Khoza (ed.), *Socio-Economic Rights in South Africa: A Resource Book* (Socio-Economic Rights Project, Community Law Centre, University of the Western Cape, Cape Town, South Africa, 2007), p.318; F M C Vlemminx, *De autonome rechtstreekse werking van het EVRM. De Belgische en Nederlandse rechtspraak over verzekeringsplichten ingevolge het EVRM 31 & 38* (Deventer 2002).

¹⁰⁶ The Food and Agriculture Organization of the United Nations, *supra* note 76.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

supervision, public scrutiny, civil litigation and penal punishment. In other words, combating the food safety problem require a collective effort from the entire nation. The government is certainly accountable for all mandatory activities necessary to ensure the quality and safety of food, including enacting food regulations, operating food inspectorates, organizing analytical services, and enforcing rules. The participation of other stakeholders and interested parties including the industry, consumers, communities and even the society as a whole, is equally crucial. The battle will happen across a gamut of fields involving governmental conduct, social ethics, public relations, business practice, and consumer culture.

8.3 Human Rights and the Medical Insurance System

The medical insurance system of a state directly affects its people's key human rights, namely the right to life and the right to health. The notion of modern medical insurance can be traced back to the introduction of the *Sickness Insurance Program* in 1883 in Germany. The antecedents of similar kinds existed in the form of charity or welfare in some civilizations, such as Friendly Societies organized by European trade guilds, fraternal organizations, the *English Poor Law* 1601, the *Prussian Common Law* 1974, and the Civil War Pension Program 1862.

The *Sickness Insurance Program* in Germany came as a result of the Medical Reform Movement 1848 and a series of political debates and compromises afterwards.¹¹¹ The *Sickness Insurance Act* was enacted in 1883 to facilitate the program. The law allowed the largest segment of workers to benefit from access to public health care through insurance funds. In the event of accidental injury, illness or old age, workers were entitled for minimum indemnity for medical treatment and sick pay for up to 13 weeks. This initial system was financed by workers and employers, with the employers contributed one third, while the workers contributed two thirds to insurance funds. In 1884 Germany passed the *Accident Insurance Act* covering serious and fatal accidents occurring on the job in certain industries. The 1884 Act went a step further by placing the entire cost of the liability on the employers. The significance of the German health insurance program introduced in the 1880s lay in that it was for the first time in history that a national health insurance system was institutionalized.¹¹² Following the German practice, industrialized countries commonly introduced social security programs in the following decades, i.g., the UK

¹¹¹ See Lynne Susan Katzmann, *The German Sickness Insurance Programme 1883–1911: Its Relevance for Contemporary American Health Policy* (PhD Thesis, London School of Economics and Political Science, 1992, UMI Number: U062704), pp. 43–58.

¹¹² See Howard M Leichter, *A Comparative Approach to Policy Analysis: Health Care Policy in Four Nations* (Cambridge University Press, 1979), p 110. See also Editor, “Universal Health Care”, *Wikipedia*, available at <https://en.wikipedia.org/wiki/Universal_health_care>.

enacted the *Workmen's Compensation Act* in 1897;¹¹³ and the US promulgated *Social Security Act* in 1935.¹¹⁴

The medical insurance program as an indispensable part of the modern social security system has carried human societies into a new era where the government of a country provides economic assistance to persons faced with unemployment, disability, or agedness for the purpose of advancing the benefits of the members of the community as a whole.¹¹⁵ The key feature of the scheme is: it is imposed and controlled by the government. Before the introduction of social security schemes, the dominant mode of support for people unable to provide for themselves was charitable relief proffered by benevolent societies, sometimes with financial help from the authorities.

Social security comprises two arms: social assistance and social insurance.¹¹⁶ The rationale behind modern social security programs is the necessity to maintain social and economic justice. With industrialization, social security has gone through a change from charity to a state responsibility. Guaranteeing a certain amount of social well-being and economic security to every individual member in the community has become a duty of a modern state.¹¹⁷ Nowadays, social security has emerged as a human right enshrined in the *Universal Declaration of Human Rights*, which states:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.¹¹⁸

¹¹³ See Lee K Frankel and Miles M Dawson, *Workingmen's Insurance in Europe* (Charities Publication Committee, New York, 1911), p. 42.

¹¹⁴ Some acts were passed earlier, including the *Federal Employers' Liability Act* 1906, the *Federal Employees' Compensation Act* 1908, to assist the railroad employees, employees in unusually risky jobs. See Jack J Burriesci, *Historical Summary of Workers Compensation Laws* (OLR Research Report, March 7, 2001), available at <<https://www.cga.ct.gov/2001/rpt/2001-R-0261.htm>>.

¹¹⁵ See OECD, "Glossary of Statistical Terms: Social Security Schemes", available at <<https://stats.oecd.org/glossary/detail.asp?ID=2496>>.

¹¹⁶ International Labour Organization defines social security as "security that society furnishes through appropriate organizations against certain risks to which its members are exposed". It is further interpreted by Sir Williams Beveridge as: The term social security "is used to denote the security of an income to take the place of earnings, when they are interrupted by unemployment, sickness or accident, or to provide for retirement through age or to provide loss of support by the death of another person, and to meet exceptional expenditure such as those connected with birth, death and marriage." See William Beveridge, *Social Insurance and Allied Services* (Report presented to Parliament in December, the United Kingdom, 1942) at p.120. See also Julian Fulbrook, *Law at Work; Social Security* (Sweet and Maxwell, London, 1980) at p. 16

¹¹⁷ See S Mini, *Social Security of Labour in the New Indian Economy* (unpublished PhD Thesis, Cochin University of Science and Technology, Cochin 682022, 2010) p. 56, available at <<https://dyuthi.cusat.ac.in/xmlui/bitstream/handle/purl/2788/Dyuthi-T0809.pdf?sequence=1>>.

¹¹⁸ Article 22 of the *Universal Declaration of Human Rights*, G.A. Res 217 A (III), available at: <<http://www.refworld.org/docid/3ae6b3712c.html>>.

After the establishment of the socialist state in 1949, as part of the social welfare or security package China introduced a state funded, central planned health care system, which provided a universal coverage of health care to the Chinese population. An innovative feature of the system was the operation of the so call barefoot doctors at health clinics at the village and township level, which served the mass rural citizens accounting for three quarters of the total population.¹¹⁹ This system was held up as a model for providing universal health care in the developing world in the 1970s by the World Health Organization (WHO) and inspired WHO to launch the “Health for all by 2000 A.D.” program.¹²⁰ Under this scheme, public health in China improved dramatically, with the citizens’ life expectancy increasing from 35 to 68 years, infant mortality decreasing from 200 to 34 per 1000 live births.¹²¹ The system operated in China for nearly 40 years until the market oriented medical reform took place in the 1980s. As a result, China’s health care program has experienced a change from a scheme performing universal social welfare function to a model that is a mixture of free market and medical insurance. However, the reform turns to be a failure which makes China’s health care scheme one of the least equitable systems in the world.¹²²

8.3.1 *Forsake Good and Do Evil – The Failure of the Health Care Reforms*

From an academic point of view, it is perceived that China’s medical reform in the 1980s and 1990s was basically a buck-passing strategy.¹²³ In a joint report in 2005, both WHO and the State Council of China admitted that China’s medical reform was overall unsuccessful.¹²⁴ Nevertheless, this system was costly and prone to ineffi-

¹¹⁹The barefoot doctors are the medical practitioners who had only basic health care training and lived in the community they served. They focused on prevention rather than cures by combining western and traditional medicines, as well as combining medical education and basic treatment. See Sai Ma and Neeraj Sood, *A Comparison of the Health Systems in China and India* (RAND, Information and Interdisciplinary Subjects Series, Occasional Paper, Volume 212, 2008) 5–6; See also Rong Hu, Chunli Shen, and Heng-fu Zou, *Health Care System Reform in China: Issues, Challenges and Options* (CEMA Working Papers 517, China Economics and Management Academy, Central University of Finance and Economics) 2, available at <<https://ideas.repec.org/p/cuf/wpaper/517.html>>.

¹²⁰See the *Declaration of Alma-Ata*, WHO 1978.

¹²¹See David Blumenthal and William Hsiao, “Privatization and Its Discontents—The Evolving Chinese Health Care System”, *The New England Journal of Medicine* (2005) 1165–1170. See also Yuanli Liu, William C Hsiao and Karen Eggleston, “Equity in health and health care: the Chinese experience”, 49 (10) *Social Science & Medicine* (1999) 1349–1356.

¹²²See WHO, supra note 120.

¹²³See Yanzhong Huang, *Governing health in Contemporary China* (Routledge, London and New York, 2013), pp. 10–12.

¹²⁴See Junxiu Wang, “Three Prescriptions for Treating the Symptoms of the Medical Reform”, *China Youth Daily* (July 29, 2005) 3, available at <<http://news.sina.com.cn/c/2005-07-29/05007353717.shtml>>.

ciency and abuse. Its sustainability posed a challenge to the leadership in the post-Mao era, which had an economic reform scheme at the top of the agenda. By the 1980s, the administrative and financial support for the health care was removed from the national agenda through decentralization before a nationwide health insurance system was provided.¹²⁵ With local governments having little incentive to promote local healthcare, individuals of rural areas and urban non-salaried residents primarily relied on out-of-pocket spending for medical and health services. In the meantime, prices for provision of medicines, diagnostic tests, surgical implants, and specialized care were deregulated. As a direct impact, many Chinese were in short of medical services and supplies since they simply resolved to not seeking medical help. It was reported in 2003, about 50% of the Chinese people refused to see a doctor when ill and 30% of those refused to go to hospital, mainly out of financial concerns.¹²⁶

There was still worse to come. After the collapse of the previous model, no strategy was adopted to mitigate the lack of integration and coordination in the later medical system. Due to a lack of reliable local clinics, people had to wait in long queues for basic health care, with no scheduled appointments and little privacy. After all the inconvenience, what they could receive was usual a very brief face to face consultation of a few sentences or a couple of minutes.¹²⁷ During this period, health care was seen “as a consumption activity rather than a fundamental right of the people or a responsibility of the state”.¹²⁸ Indeed, this unsustainable, reactionary approach had to be subject to review and amendment.¹²⁹

As a result, in 2003, the New Cooperative Medical Scheme (NCMS) for rural population, mainly funded by the government, was launched.¹³⁰ Since 2007, a health insurance scheme for urban non-salaried residents, especially for children and old people has been implemented.¹³¹ Although China’s health care system has appeared to get back on the track of government subsidy since the mid-2000, it is far from offering accessible, affordable, equitable and quality health care services with a universal coverage. Some believe that the current health care reform is unlikely to solve the fundamental problems of accessibility, affordability, equity and quality. As long as the buck-passing polity does not fully change and the health policy process is still influenced by interested groups, the problem of dis-

¹²⁵ See Jason Shafrin, “An Olympic Post: The History of the Chinese Healthcare System”, *Healthcare Economist* (August, 2008), available at <<http://healthcare-economist.com/2008/08/page/3/>>.

¹²⁶ See Arthur Daemrich, “The Political Economy of Healthcare Reform in China: Negotiating Public and Private”, 2 (448) *SpringerPlus* (2013), <<https://doi.org/10.1186/2193-1801-2-448>>.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Public dissatisfaction with health sector performance along with emerging public health problems, notably SARS in 2003, became driving forces for reform. See Qingyue Meng and Shenglan Tang, *Universal Coverage of Health Care in China: Challenges and Opportunities* (World Health Report 2010, Background Paper 7), p. 4.

¹³⁰ Ibid.

¹³¹ Ibid.

parity inherent in China's health care system will continue to affect the country's social environment.¹³²

The worst part of China's health care system is the rampant medical corruption stemming from the medical reform over the past decades, particularly in the period between the mid-1980s and the mid-2000s. The usual scenario is that doctors and other staff expect to be paid extra fees (usually in the form of "red envelopes"¹³³) to perform operations and take kickbacks from pharmaceutical firms and medical-equipment suppliers. The practice is so prevalent that an unsullied doctor nearly does not exist.¹³⁴ Almost all practitioners and medical staff tell the same story as the defence of their unclean hands – low salary or underpayment. Whistle blowers also tell that doctors have economic income targets allocated by hospitals and hospital administrators for them to meet and exceed. Only upon completion of their quotes, they are paid benefit bonuses which can be much higher than their basic salaries.¹³⁵ In other words, they are under pressure to charge patients extra fees and to recommend patients to go through unnecessary but expensive tests and procedures as well as purchase expensive medicines.

Nonetheless, such excuses are not sound enough to defeat professionalism and patients' human rights. Besides, on many occasions, they are free to make a choice. For instance, a surgeon or a nurse can always hold up professional dignity by declining a red envelop because it is commonly given privately. Moreover, nothing can justify their procurement of bribes and kickbacks from pharmaceutical companies or health care companies. Facing a choice between campaigning for improving income or work environment and becoming corrupt, Chinese doctors have had less difficulty in choosing to compromise their professional morality in the first place. Moreover, nothing can defend the corruptive and negligent conduct of the personnel in governments and the health care system, which have caused further spread of epidemics such as AIDs.¹³⁶ A nation has every reason to become alarmed when seeing medical profession to be infested by the epidemic of corruption. The governments

¹³² See Oriana Skylar Mastro, "China's Health Care Reform: Not Just a Policy Failure, Carnegie Endowment for International Peace" (April 24, 2007), available at <<http://carnegieendowment.org/2007/04/24/china-s-health-care-reform-not-just-policy-failure/hef>>.

¹³³ An envelope with cash inside.

¹³⁴ Says the Beijing surgeon, who did not want his name used because of the sensitivity of the subject: "If the government is really serious, all the Chinese doctors and drug companies will be found guilty because no drug manufacturer or doctor is innocent. If doctors are to be laid off for receiving *hongbao*, then every Chinese doctor will be laid off. But then who will take care of the patients?" See Hannah Beech, "How Corruption Blights China's Health Care System", *Time* (August 2, 2013), <<http://world.time.com/2013/08/02/corruption-blights-chinas-healthcare-system/>>.

¹³⁵ A doctor's income comprises basic salary and benefit bonus. If the benefit bonus is fully deducted, the doctor only receives the basic salary part. People usually refer the basic salaries when speaking their salaries.

¹³⁶ See Yanhai Wan & Xiaorong Li, "Consequences of a Stalled Response: Epidemic among Blood Donors in Central China", in Chris Beyrer M D M P H and H F Pizer (eds.), *Public Health and Human Rights: Evidence-Based Approaches* (The Johns Hopkins University Press, Baltimore, M D, 2007), pp. 65–87.

and citizens all have a responsibility to trace the deep root of the phenomenon in their society, culture, policy and ethics in order to find the cures.

8.3.2 How Medical Problems Entail Human Rights Issues

Access to quality health care services is a basic right in a civilized society. It is essential to one of the core human rights – human right to health.¹³⁷ The human right to health care means that hospitals, clinics, medicines, and doctors' services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed. Hence, universal access, availability, acceptability, dignity, non-discrimination, accountability, and transparency should be the fundamental principles upon which a health care system is built. Many countries have upheld health care as a basic human right in their laws.¹³⁸ Unfortunately, the failure of the health care scheme has deprived many Chinese citizens this right for more than two decades after the medical reform. This renders China's medical reform a truly disgraceful story.

When people are deprived their access to hospital and health care services, their human rights, including their rights to health, life and information are potentially compromised and threatened. China is a contracting party to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *United Nations Convention against Corruption* (UNCAC), a signatory of the *International Covenant on Civil and Political Rights* (ICCPR). It is thus under treaty obligation to protect individuals against corrupt acts of third parties. Though corruption and abuse of the health care scheme committed by practitioners and professionals in hospitals, insurance companies and suppliers of medical and health care goods and services impact on patients' human rights, the guilty individuals are not in direct breach of the UNCAC. Instead, the UNCAC is directed primarily at Member States rather than non-state actors. Hence, it is the obligation of the Chinese government to prevent corruption involving governments, industries, companies and individuals in fight against corruption and to raise public awareness of the matter.¹³⁹

8.4 Conclusion

Due to the fact that corruption has invaded into every corner of the Chinese society, citizens have faced an unfavorable physical and social environment. Fraud in project approvals and failure to apply emission control measures are responsible for

¹³⁷ The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment.

¹³⁸ Xiangming Zhou, *A Study of the Health Care Right* (PhD thesis, Jilin University, 2006) 1.

¹³⁹ See Part II – Articles 12 and 13 UNCAC.

rising pollution in the country. Some professions including teachers, doctors, lawyers and those safeguarding consumptive goods are not only important to people's lifestyle and well-being and society's progress, but also play a social role in which trustworthiness is an expectation in every tradition.¹⁴⁰ In China, these professions, because of the rampage of the unethical performance conducted by a majority of the people in the trades, have definitely failed to honor their part of social compact with society, which in turn exacerbates human rights related problems. It is a high time for China to review the ethical conduct of these key professions. The Chinese government has an obligation to protect citizens' human rights to health, access to healthy food, safe drinking water, clean air, and a healthy environment. In discharging this obligation, effective mechanisms combating corruption in various forms need to be established in order to sustain the country's social stability and economic prosperity.

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¹⁴⁰ “Trust cannot be eliminated from human relationships, at least of all relationships with professionals.” See Trudy Govier, *Social Trust and Human Communities* (McGill_Queen's University Press, Montreal, 1997), p. 85.

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