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The Drug Treatment and Rehabilitation System in the Anti-Drug Law

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control legislation in
contemporary China

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前言

中国的禁毒管制立法已有数百年历史。关于鸦片管制的第一个法令可以追溯到 1792 年，此后，制定了 500 多项关于鸦片和其他毒品的法律、法规和其他规范性文件。这使中国成为世界上禁毒立法历史最悠久、内容最丰富的国家。然而，中国在这方面的立法之所以构成一个有趣的案例研究的原因，并不仅仅与它的历史渊源有关。事实上，中国与毒品的关系，经历了合法化甚至鼓励生产和消费阶段与零容忍的交替，以及基于政治背景和其他国家的影响，对毒品现象采取了严厉了控制和压制措施。历史上毒品被赋予的象征性价值也对中国的禁毒法产生了重大影响。

本论文旨在从法律的角度出发，从分析 2008 年开始实施的禁毒框架法律《中华人民共和国禁毒法》入手，说明中国目前的戒毒治疗和康复体系。该法是一部广泛而复杂的立法结果，与中国的历史和国家禁毒政策演变密切相关。因此，前三章试图从历史出发，为理解现行立法提供所有必要的要素。通过对历史上有关禁毒管制主要事件的概述，既介绍了有关禁毒的立法问题，也介绍了戒毒的问题，对于理解中国目前对毒品的态度的由来至关重要。

在本论文的第一章中，对 20 世纪 50 年代以前的毒品管制主题进行了总结。中国关于毒品的文献非常丰富，尤其是十九世纪鸦片战争时期的文献。考虑到西方国家直接参与了两次战争，不仅是中国专家，还有无数外国专家从各种角度致力于研究于该国的毒品现象。本章无意详细研究中国与毒品之间数百年的复杂关系，而是打算提供一个历史框架，为更深入地分析近五十年来禁毒政策和立法提供背景。直到二十世纪，与鸦片有关的活动影响了该国的许多方面，从经济、社会、国际关系到法律和政治。造成损害最大的是鸦片成瘾的大规模蔓延。在其他国家，尤其是西方国家的眼中，中国及其人口的形象受到了影响和损害，获得了“东亚病夫”的称号。在二十世纪初期，中国对吗啡和海洛因等新物质的出现充满了敌视。在那些年里，为了打击和控制毒品现象，中国进行了各种尝试，严打阶段、宽容阶段和试图对鸦片实行国家垄断的阶段交替出现。然而，直到 20 世纪 50 年代初，中华人民共和国成立后不久，中国才成功制止了毒品问题，从世界上最大的鸦片进口国，消费国和生产国，宣布成为无毒国家。

在随后的二十年里，毒品问题在中国基本上不存在。然而，到了 80 年代，随着中国向外界重新开放，这个问题再次强烈地出现了。第二章介绍了导致毒品问题再次出现的经济、地理、社会和意识形态因素。然后介绍了政府在毒品管制方面采取的政策，区分了两个时期。第一时期是从 1970 年代末到 1990 年代后半期，在这一时期，1950 年代的镇压方法的影响仍然很大；第二个时期是从 1990 年代末至 2000 年代末，在此期间，中国开始意识到了问题的

严重性和发展新方法来解决毒品问题的必要性。中国以为，只要重现 1950 年代的禁毒运动，就可以轻易地拒绝新出现的毒品问题。实际上，孤立状态的结束和新情况的出现，禁毒管制政策和方法必须要进行改变。该国意识到需要与其他国家合作以解决一个不仅仅是全国问题，而且是全球性问题。它还认识到有必要在问题管理中纳入更多方面，并采取较少的压制性政策。

随着 1980 年代开始的中国法制改革，禁毒法规体系也已初具规模。以前这个问题是通过党的说明和法令来规范的，但是从那时起，真正的禁毒立法开始出现，以刑法为支点，并以一系列分散的部门法律法规为补充。在第二章中所观察到的政策演变，在将作为第三章主题的立法演变中也有所体现。从 1980 年代初期的惩罚性方法到 1990 年代后半期，中国转向了更为全面的方法，中国开始通过预防运动和戒毒措施来强调需求方的重要性。

第四章分析了《禁毒法》，该法是前几章所述政策和法规框架的综合。该法是中国禁毒立法的一个里程碑，证明了禁毒战争在中国继续发挥着重要作用。它为过去 40 年禁毒的实践和政策提供了法律依据，起着“禁毒宪法”的作用，规范和协调了现有和未来的法律法规。本章分析了《禁毒法》的目的、内容和结构，最重要的关键点和假设修订的改进余地。该法三分之一以上的篇幅由有关戒毒治疗和康复措施的章节组成。后者也是该法中最具创新性的主题，同时也是该法出版时规定最少的主题。此外，这是一个有趣的案例，因为它涉及了不同的社会力量，并实践了当时的政治原则，例如维护公共秩序的中心性和以人为本的方法，这些原则基本上一直保持到今天。尽管该法律旨在以人为本，更加人性化，以健康为导向并采用科学的戒毒方法，但它也使警察在戒毒管理中发挥了主要作用。

在第五章中，将详细分析《禁毒法》中有关戒毒的条款，并将该法的理论规定与其实际执行情况进行比较。通过 2011 年《戒毒条例》使用的细分，介绍了戒毒方法的四种：

- 一．自愿戒毒
- 二．社区戒毒
- 三．强制隔离戒毒
- 四．社区康复

该条例是对《禁毒法》的戒毒措施章节的补充，将与法规本身同时进行分析。本章的部分内容是专门针对一些国际非政府组织对戒毒和对吸毒成瘾人员的管理提出的批评，并对中国被指控侵犯人权的情况进行了分析。第五章的最后部分介绍了阳光工程的案例研究。这是在省级诞生的社区戒毒工程，是落实《禁毒法》的正面案例，也是在国家层面可以借鉴的假设模式。

最后，在第六章中，根据官方数据和最新资料，主要是政府资料，简要说明了中国毒品现象的现状。本章报道了习近平主席领导下关于禁毒的主要政治指导方针。最后，介绍了戒毒的最新趋势和政治创新。

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ACRONYMS

ASEAN→ Association of South-East Asia Nations
CCCPC→ Central Committee of the Communist Party of China
CCP→ Chinese Communist Party
CIT→ Compulsory Isolated Treatment
CMPO→ Comprehensive Management of Public Order
ICCPR→ International Covenant on Civil and Political Rights
IDU→ Injecting Drug User
INCB→ International Narcotics Control Board
MMT→ Methadone Maintenance Therapy
MPS→ Ministry of Public Security
NCB→ Narcotics Control Bureau
NNCC→ National Narcotics Control Commission
NPCSC→ Standing Committee of the National People's Congress
PBSC→ Politburo Standing Committee
PRC→ People's Republic of China
RTL→ Re-education Through Labour
SAPL→ Security Administrative Punishment Law
SPC→ Supreme People's Court
UN→ United Nations
UNDCP→ United Nations International Drug Control Programme
UNODC→ United Nations Office of Drug and Crime
WHO→ World Health Organization

INTRODUCTION

China's drug control legislation has a centuries-old history. The first decree on opium regulation dates back to 1792 and since then more than 500 laws, regulations and other regulatory documents on opium and other narcotics have been enacted. This makes China the country with the oldest and most substantial drug control legislation in the world. The reasons why the Chinese legislation on the subject constitutes an interesting case study are not, however, linked only to the antiquity of its historical roots. The relationship between China and drugs, in fact, has seen the alternation of phases of legalization and even incentives for production and consumption, with phases of zero tolerance and harsh measures of control and repression of the phenomenon, based on the political context and the influence of other nations. The symbolic value attributed to drugs throughout history has also had major repercussions on China's anti-drug laws.

This thesis aims to illustrate the current system of treatment and rehabilitation from drug addiction in China from a legal point of view starting from an analysis of the Anti-Drug Law, a framework law on drug control in force since 2008. This Law is the result and the synthesis of a wide and complex legislation, strictly connected to Chinese history and the evolution of the country's anti-drug policies. The first chapters have therefore tried to provide all the necessary elements for the understanding of the current legislation, starting from history.

The historical overview of the main events concerning drug control introduces both the issue of legislation on the subject and the issue of drug addiction treatment, and is essential to understand the origin of China's current attitude towards drugs. In the first chapter of this thesis the theme of drug control up to the 1950s is summarised. As for China, the literature on drugs is very extensive, especially in reference to the period of the Opium Wars in the nineteenth century. Considering the direct involvement of Western countries in the two wars, countless experts, not only Chinese, have devoted themselves to the study of the drug phenomenon in the country, from various points of view. This chapter does not purport to examine in detail the centuries-old and complex relationship between China and drugs, it rather intends to provide a historical framework that provides the background for a more in-depth analysis of drug policies and legislation in the last fifty years.

Up to the twentieth century, opium-related activities influenced many aspects of the country, from the economy, to society, to international relations, to law and politics. However, it was the large-scale spread of opium addiction that caused the most damage. The image of China and its population was in fact influenced and compromised in the eyes of other countries, especially Western countries, among which China acquired the reputation of "Sick man of Asia".

The appearance of new substances, such as morphine and heroin, in the early decades of the twentieth century, was greeted with great hostility by China. In those years various attempts were made to counter and control the drug phenomenon, alternating phases of severe repression, phases of greater tolerance and attempts to impose the state monopoly on opium. However, it was not until the early 1950s, shortly after the founding of the PRC, that China successfully cracked down on the drug problem, and went from being the world's largest opium importer, consumer and producer to declaring itself a drug-free nation.

In the two decades that followed, the problem was substantially absent and re-emerged strongly in the 1980s, following the reopening of China to the outside world. The second chapter describes the economic, geographical, social and ideological factors that led to the re-emergence of the drug problem. The policies adopted by the government on drug control are then presented, distinguishing between a first period, which goes from the end of the 1970s to the second half of the 1990s, in which the influence of the repressive methods of the 1950s was still very strong, and a second period that includes the end of the 1990s and the 2000s, in which China became aware of the extent of the problem and the need to develop new methods to solve it. In fact, China thought it could easily reject the emerging drug problem by reproducing the campaign of the 1950s. In reality, the end of isolation and the new conditions also required a change in drug control policies and methods. The country realized the need to cooperate with other nations to tackle a problem that was no longer just national but also global in scope, to include more aspects in the management of the problem and to adopt a less repressive policy.

With the reform of the Chinese legal system starting in the 1980s, the anti-drug regulatory system also began to take shape. In fact, if previously the problem had been regulated through Party notes and decrees, since then a real anti-drug legislation began to emerge that had the Criminal Law as its fulcrum, supplemented by a series of scattered departmental laws and regulations. What was observed on the evolution of policies in the second chapter is reflected in the legislative evolution that will be the subject of the third chapter. From the repressive approach of the early 1980s, in the second half of the 1990s, China moved to a more comprehensive approach and began to attribute greater importance to the demand-side through prevention campaigns and the regulation of drug addiction treatment.

The fourth chapter analyses the Anti-Drug Law, which constitutes a synthesis of the policies and regulatory framework described in the previous chapters. The Law is a milestone in Chinese anti-drug legislation and testifies to the important role that the war on drugs continues to have in China. It provides a legal basis for the practices and policies used in drug control over the previous forty years and plays the role of an "anti-drug constitution" to standardize and coordinate existing and

future laws. The chapter analyses its aims, contents and structure, critical points and margins for improvement in a hypothetical revision.

More than a third of the Law is made up of the chapter on drug treatment and rehabilitation measures. The latter is also the most innovative subject of the Law and the least regulated at the time of its publication. Furthermore, it represents an interesting case since it brings into play different social forces and puts into practice the political principles of the time, such as the centrality of the maintenance of public order and the people-centred approach, which have been largely maintained until today. Although the Law aims to be people-centred, more humane, as well as health-oriented and with a scientific approach to treatment, it also attributes a primary role in the management of the latter to the police.

In the fifth chapter, the articles of the Anti-Drug Law relating to treatment and rehabilitation will be analysed in detail, comparing the theoretical provisions of the Law with their practical implementation. The subdivision into the four treatment methods used by the 2011 Drug Detoxification Regulation was adopted: 1. Voluntary treatment; 2. Community-based treatment; 3. Compulsory isolated treatment; 4. Community-based rehabilitation. The Regulation, which constitutes a supplement to the chapter of the Law, is analysed in parallel with the Law itself. Part of the chapter is devoted to criticisms of the treatment of drug addiction and the management of drug addicts raised by some international NGOs, with an analysis of human rights that China has been accused of violating. The last part of the fifth chapter deals with the case study of the Sunshine Project, a community-based treatment project born at the provincial level, which is a positive example of implementation of the Law and a hypothetical model to be followed at the national level.

Finally, in the sixth chapter, the current situation of the drug phenomenon in China is briefly illustrated on the basis of official data and up-to-date sources, mainly governmental. The main political guidelines on drug control under the administration of President Xi Jinping are reported. To conclude, the latest trends and political innovations on drug addiction treatment are presented.

CHAPTER 1: BRIEF OVERVIEW OF DRUG CONTROL IN CHINA BEFORE 1978

China has a centuries-old history of drug control. Its behaviour towards narcotics and other psychotropic substances has varied greatly throughout history. Drug control was primarily concerned with opium until the twentieth century. Since then the focus has gradually shifted to other substances such as heroin, methamphetamines, and other synthetic drugs.

Opium (鸦片 *yapian*) was not originally from China but imported by Arab merchants probably around the seventh, or eighth century, during the Tang Dynasty (618-907)¹. It was initially used for medical purposes due to its pain-relieving properties and to treat various diseases including dysentery, cholera, headache, fever, asthma, and many others, and to help contain hunger. It was also believed to help preserve life energy and was used to find relief after a day's work². Under the Ming dynasty (1368-1644) the main role of opium changed from medicinal (药 *yao*) to aphrodisiac (春药 *chunyao*). It was consumed in various forms as a powder, syrup, or in addition to food or drink. The smoking method, which potentially caused more addiction than the traditional ingestion method, was introduced by the Dutch East Indian Company in India and in south-eastern regions (i.e. Guangdong and Fujian) of China. The introduction of this mode of consumption was a determining factor in the widespread use of opium in the late Qing period and it was also fostered by a temporary banning on smoking tobacco³. Before the spreading of the habit of smoking it pure, opium was added to tobacco (烟 *yan*) and was called madak (鸦片烟 *yapianyan*). Madak smoke first began to spread in the coastal areas of southern China, but never reaching the popularity of tobacco⁴.

In the Qing dynasty (1644-1912) the opium use was mainly tied to the philosophical beliefs in Confucianism and Daoism. The importance of social rituals such as drinking tea and smoking tobacco and opium can be traced back to Confucianism. Respect for rituals was in fact considered a manifestation of the family and social hierarchical order. The symbolic function of public places in which to smoke opium probably also derived from this. The preference of opium over other substances such as alcohol can also be linked to Confucianism due to shame culture. In fact, unlike alcohol, although potentially harmful to the individual, opium was considered a source of minor shame and disorder for society. On the other hand, the causes of the spread of opium in the eighteenth and nineteenth centuries may have been linked to Daoism on an ideological level due to the doctrine

¹ Frank DIKOTTER, Lars LAAMANN, Zhou XUN, *Narcotic culture: A History of Drugs in China*, University of Chicago Press, 2004, p. 32; LU Hong, MIETHE Terance D., LIANG Bin, *China's Drug Practices and Policies*, London, Routledge, 2009, p. 27

² R. K. NEWMAN, "Opium Smoking in Late Imperial China: A Reconsideration", *Modern Asian Studies*, Vol. 29, No. 4, 1995, pp. 765-794

³ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.27

⁴ Frank DIKOTTER, Lars LAAMANN, Zhou XUN (2004), p. 32

of non-action (*wu wei*) which could have influenced the slow reaction of the Qing government in countering the opium problem. Furthermore, in the personal sphere, Daoism supports the ideal of a carefree lifestyle that may have influenced the behaviour of many Chinese people towards opium, including the court and government officials⁵.

The spread of opium as a status symbol was also a consequence of the Chinese collectivist society in which the pressure to conform to social conventions was strong. As had already happened centuries before with drinking tea and smoking tobacco, smoking opium also developed a deep cultural value, and around it social rituals took shape that concerned both how it was prepared and smoked, and where it was consumed. In fact, numerous opium dens began to arise as places of social gathering⁶.

The first royal opium edict, issued in 1729 by Emperor Yongzheng (1722-1735), made China the first nation to regulate opium activities. The emperor was unfavourable to the habit of smoking opium, which he considered an "evil" (害 *hai*) that had detrimental effects on personal health, altering sexual desire and causing promiscuity, and leading people to withdraw from family and society⁷. The first edict only prohibited the sale and distribution of opium penalizing opium dealers and opium dens keepers, while personal use and importation of opium were not considered crimes⁸. Since then, China with more than 500 laws, regulations, legal documents and local rules enacted on drug control is the country with the largest anti-narcotics legislation in the world⁹.

In the late eighteenth century, the British East India Company began importing opium into China and in the nineteenth century there was a dramatic increase in opium imports and consumption. Initially the imperial government had done almost nothing to counter the expansion of the opium trade, but in the first decades of the nineteenth century it began to become aware of its the political, social and, especially, economic implications. The Qing emperors began to enact bans that gradually covered all opium-related activities, including importation, domestic cultivation, and consumption, especially by certain categories such as officers, soldiers and civilians. However, the scale of the opium trade had reached such magnitudes as to cause serious economic problems to China, mainly because drugs began to be paid for in silver and no longer with the exchange of Chinese goods, resulting in silver shortage and a growing budget deficit. This led to the strengthening of strategies and law enforcement

⁵ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 52-53

⁶ Ibid. p. 26

⁷ Ibid. p. 40

⁸ LU Hong, LIANG Bin, "Legal Responses to Trafficking in Narcotics and Other Narcotic Offences in China", *International Criminal Justice Review*, Vol. 18, No. 2, 2008, pp. 212-228; Timothy BROOK, Bob Tadashi WAKABAYASHI, *Opium Regimes: China, Britain, and Japan, 1839-1952*, Berkeley, University of California Press, 2000

⁹ LIANG Bin, LU Hong, "Discourses of drug problems and drug control in China: Reports in the *People's Daily*, 1946-2009", *China Information*, 27(3), 2013, pp. 302

measure to contain the spread of opium-related activities. But on the other hand, the profit which came from the trade to both foreign traders and Qing officials, made the measures largely ineffective¹⁰. In the 1830s opium made up more than half of Chinese imports and was responsible for draining the empire's wealth. In those years a debate emerged for the resolution of the problem, which led to the split of the Mandarin élite between those who favoured the legalization of the opium trade and the incentive to national production to fight smuggling and stop the spill of silver, and those who supported a regime of repression and prohibition¹¹.

Emperor Daoguang chose the second current and in 1839 the official Lin Zexu, appointed as imperial commissioner, was sent to Guangdong province to implement an opium suppression program that implied the death penalty for both traffickers and opium addicts, including foreigners, with the aim of making collapse the market. To demonstrate China's firm intentions to block its trade, the official managed to seize from British merchants an enormous quantity of cases of opium which were publicly burned. However, British merchants did not agree to stop the opium trade which had become vital to the British Empire and tensions resulted in the First Opium War (1839-1842).

Lin Zexu underestimated the military strength of the British empire and didn't consider the factor of their determination in gaining the free trade of opium with China, and he was soon dismissed from office. After the failure of a diplomatic attempt to end the war, it ended with the military defeat of China and the signing of the Nanjing Treaty in 1842. The consequence of the defeat was the granting of concessions for foreign traders: Hong Kong was ceded to Britain and five Chinese ports were opened for foreign settlement, including Shanghai, Guangzhou, Ningbo, Xiamen and Fuzhou. The Nanjing Treaty was the first of the "unequal treaties" between China and the Western powers.

The Second Opium War (1856–60), or the Anglo-French War, was fought by Great Britain and France against China. It is also called Arrow War, from the name of the vessel carrying contraband opium stopped and inspected by the Chinese authorities in 1856. This incident was used by the British and French as a pretext for a second conflict with the aim of obtaining further concessions from China. In 1858, the Treaty of Tianjin, stipulated by the foreign powers, formally legalized opium importations; it also provided for the payment of war indemnity and the opening of other Chinese ports. A brief resumption of hostilities followed which culminated in 1860 with the Beijing Convention in which the conditions of the Tianjin Treaty were confirmed, and an increase in war reparations and further concessions were added. The Chinese edicts banning opium cultivation and

¹⁰ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp.17-55; Timothy BROOK, Bob Tadashi WAKABAYASHI (2000), p. 6

¹¹ Francesco MONTESSORO, *La merce dei sogni. L'oppio nella società e nell'economia dell'Asia orientale*, Milano, Franco Angeli, 1999, pp. 33-36

trade were repealed, further marking the entry of China in the era of unequal treaties and threats to Qing sovereignty¹².

After China's defeat, in the second half of the nineteenth century, opium began to be consumed on a large scale by the Chinese population of all social strata. As observed by Lu, Miethe and Liang (2009), the trend analysis of the estimated number of drug addicts must take into account that the available estimates are approximate for various reasons including the scarcity of reliable and complete historical data, the lack of a precise definition of "drug addict" and the sensitivity of the subject for China. Furthermore, in the estimates there is no distinction based on the various types of drugs.

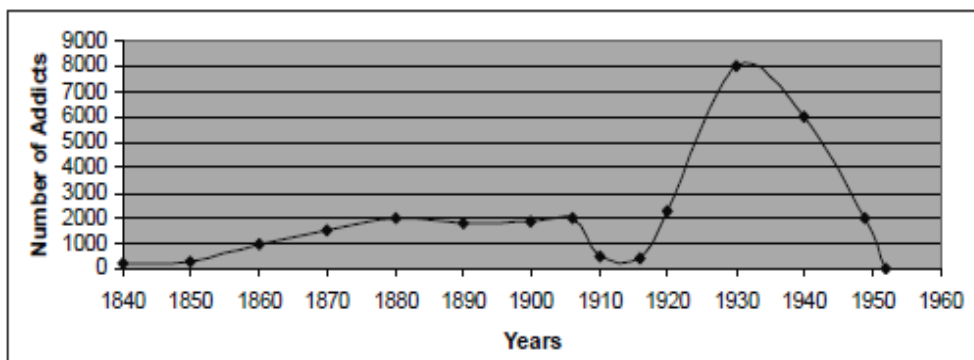


Fig. 1 Estimated number (in 10,000s) of drug addicts in China from 1840 to 1952. Source: Lu Hong, Terance Miethe, Liang Bin (2009), p. 142

According to estimates of opium imports, the number of habitual opium consumers in China was about 50.000 in 1767, but it grew significantly to about 2 million in 1840. It steadily increased to reach 20 million around 1880 and it remained stable until the beginning of the 20th century.

In the first half of the Nineteenth century, some royal decrees were issued to ban the use of opium, however for various reasons including the economic interests that revolved around opium-related activities and the fact that smoking it was establishing itself as a social ritual, this did not affect opium consumption. During and after the Opium Wars, opium smoking became *de facto* legal until 1905, but the legalization, when population growth is taken into account, doesn't seem to have increased the rate of opium addiction. According to some research, between 1 and 3 percent of the Chinese

¹² The Opium Wars are complex historical events in which economic, political and cultural forces have come into play, and which have aroused the interest of countless Chinese and Western experts. For reasons of synthesis in this thesis they are only mentioned. For more a more detailed analysis see: LU Hong, MIETHE Terance D., LIANG Bin, *China's Drug Practices and Policies*, London, Routledge, 2009; Gregory BLUE, "Opium for China: The British Connection", in Timothy Brook, Bob Tadashi Wakabayashi, *Opium Regimes: China, Britain, and Japan, 1839-1952*, Berkeley, University of California Press, 2000; Francesco MONTESSORO, *La merce dei sogni. L'oppio nella società e nell'economia dell'Asia orientale*, Milano, Franco Angeli, 1999; Frank DIKOTTER, Lars LAAMANN, Zhou XUN, *Narcotic culture: A History of Drugs in China*, University of Chicago Press, 2004; R. K. NEWMAN, "Opium Smoking in Late Imperial China: A Reconsideration", *Modern Asian Studies*, Vol. 29, No. 4, 1995, pp. 765-794

population was addicted to the drug¹³. Actually, the focus of the Chinese government was not primarily on the production and consumption of opium until the end of the nineteenth century. The government did not even have complete information on the increase in opium use. Furthermore, initially its use, when it was not for medical purposes, was confined to the leisure time of a few wealthy people, so opium use was not associated with the risks of addiction¹⁴.

In the late Qing period, the social and economic conditions of poverty, heavy taxation and rapid population growth fostered the spread of domestic poppy cultivation. For the peasants, opium cultivation was a source of income higher than that of other crops, and when it became affordable to the population, it became a way to imitate the powerful and wealthy. Foreign merchants in search of revenues from the smuggling of opium, and the inability of the Qing government to control them, contributed to the spreading consumption and cultivation of opium through the country. The domestic production managed to exceed the foreign imports, and according to some estimates, in 1906, the 85 percent of the world's opium was produced in China, about 35.000 tons, and it was regularly used by more than a quarter of the country's adult male population¹⁵.

Due to this situation, in the first years of the twentieth century, the Qing government enacted a series of reforms targeting the administration of justice, law and the military system. The legal reforms included the stipulation of many royal edicts, decrees and laws with the aim of controlling and regulating opium use, trade, cultivation and other related activities. In 1906, China launched a campaign against opium trade and the emperor issued opium ban regulations that established the eradication of poppy cultivation within ten years, a ban on opium smoking, the closure of opium dens, a ban on the import of opium, and imposing officials to give up the habit within six months. During the campaign a series of techniques already adopted in the eighteenth century was resumed. Among these, the registration of opium smokers was required. They were allowed to gradually give up the habit by adjusting the amount of opium they could purchase. The registration involved the communication of data such as name, age, address and daily amount of opium consumed. Those who travelled could apply for a one-month license that allowed them to purchase opium while traveling¹⁶. Furthermore, the New Criminal Law of 1907 regulated opium related offenses. Specifically, the offences included opium manufacturing, selling, stocking with the intention of sale, smuggling, manufacturing, selling, stocking and smuggling tools for opium smoking, providing shelter for opium smoking, cultivating opium, and smoking opium. The penalties were generally lighter than before

¹³ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 141-145

¹⁴ R. Bin WONG, "Opium and Modern Chinese State-Making" in Timothy Brook, Bob Tadashi Wakabayashi, *Opium Regimes: China, Britain, and Japan, 1839-1952*, Berkeley, University of California Press, 2000, pp. 189-197

¹⁵ ZHANG Sheldon X., CHIN Ko-lin, *A People's War: China's Struggle to Contain its Illicit Drug Problem*, Washington, Brookings Institution Press, 2015

¹⁶ R. Bin WONG (2000), pp. 189-197

with the maximum penalty for any opium offense set at ten year of imprisonment¹⁷. In addition, for the first time in the history of China, pecuniary penalties, with a maximum of 1000 yuan of fines, were imposed for some drug related offences¹⁸.

The royal edicts issued in those years and the revision of the Criminal Law caused a decrease in the number of drug addicts. Furthermore, the perception of opium as an exotic luxury item whose consumption was considered a fashion and a social ritual has changed radically. On the contrary, the use of opium began to be morally condemned and stigmatized by the educated urban population. The élites of the gentry were entrusted with the task of organizing anti-opium societies which made propaganda through publications to urge the population to stop smoking opium. At the village level, the elders were in charge of dissuading the use of opium or, in case of perseverance on the part of the offenders, of reporting its presence. Failure to comply with these orders resulted in severe penalties¹⁹. Shortly before the fall of the Qing Dynasty, in 1909, in light of the efforts that China, as the first opium trader, was making to stop the commerce, the United States convened in Shanghai a conference of thirteen nations about the opium trade, creating the International Opium Commission. It was the first meeting for the discussion on an international level of the opium problem and of the methods of suppressing it and its derivatives such as morphine. China at that time was the main site for the production and consumption of opium. Moreover, the relation between China and Great Britain had trigger a series of problems and was at the core of the international concerns about opium. Although the convention has an important symbolic meaning as it marks the beginning of an international collaboration in drug control, in fact the powers of the commission were limited and the representatives of the countries were careful not to take commitments that could negatively affect the economy of their own country. China asked Britain and France to apply their national opium laws to Chinese concessions as well and criticized Japan for its imports into China of morphine. The Commission ended with the condemnation of opium production, distribution and consumption, urging governments to take measures to solve the problem. The International Opium Convention was signed at The Hague in 1912. It was the first international treaty and marked the beginning of China's international cooperation with other countries in the fight against narcotic drugs. The Convention required member countries to develop their own legislation to restrict the use of opium and derivatives to the medical field, while allowing countries that produced it to gradually stop production through an export licensing system²⁰.

¹⁷ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp.17-55

¹⁸ LU Hong & LIANG Bin (2008), pp. 212-228

¹⁹ R. Bin WONG (2000), pp. 189-197

²⁰ Timothy BROOK, Bob Tadashi WAKABAYASHI (2000), p.13

However, despite China's involvement in international cooperation for the suppression of the opium problem and the 1911 agreement between the Qing government and Britain which provided for the cessation of opium imports from India by 1917, to Western countries fears began to emerge about the Chinese opium habit which led countries to treat China differently in international relations. These fears were triggered by information in the West from Christian missionaries, one of whose main activities had become the treatment of opium addicts. Since the opium had been brought in by foreigners, the idea was widespread that they also knew how to cure opium addiction. Missionaries had exploited this idea as early as 1835 by publishing anti-opium pamphlets and setting up clinics for opium addicts in China. In their testimonies they recognized the hardship of breaking off the smoking habit and they explained that in their clinics which offered medical and spiritual assistance, the suffering due to drug withdrawal was considered part of the curing process and its was fundamental in order to expiate the sins. Furthermore, it was the missionaries who brought the concept of addiction to China. Their clinics followed the model of Western clinics in which a given behaviour was isolated from the social context and inserted into a medical context. In this case, isolating opium addiction, they defined it as a characteristic of the subject curable through a drastic individual change. There was no commonly accepted method for treating addiction, nor a common definition of it, so the approach was more experimental than therapeutic, and each clinic adopted a number of different methods. The detoxification process was considered stressful and life-threatening, and many clinics provided patients with decreasing doses of opium or other drugs to relieve withdrawal symptoms. At the basis of the treatment was the idea that opium would drain out of the body over time. However, this was not enough to eliminate the germs of dependence on the subject, it was necessary to remove what had made him prone to it through an inner change. For the missionaries, what opium users lacked was not so much willpower as faith in Christ. For the Chinese clinics of the twentieth century, however, what the addict lacked could be filled through labour and nationalistic education. In both cases the basic idea was that the addict should be removed from society and transformed into a better person through moral reform. This approach to treatment as a personal reconstruction fit well both with the Christian concept of conversion and with the concept of national awakening of Chinese nationalists and remained in fact the approach of the clinics from 1850 to 1950²¹. The actual success of the missionaries' addiction treatment was very limited, but the activity allowed them to proselytize and at the same time rehabilitate the idea of Westerners in the eyes of the Chinese population. Based on the testimonies of the missionaries, the Western press began to convey an image of China increasingly linked to opium addiction and of a weak and depraved population. The opium pipe became the symbol of Chinese culture in the West, and together with the idea that the entire Chinese

²¹ Adam BAUMLER (2007), pp. 46-50

male population was addicted to drugs, fear spread that the Chinese could "contaminate" the West with opium addiction²².

In the Republic Era, from 1911 to 1949, China underwent significant transformations from an imperial, dynastic regime to a semi-colonial, semi-feudal and semi-capitalist system. In this politically turbulent period characterized by internal struggles, the Western imperialism, and the influence of the new foreign ideas of individual rights, democracy and technology, also in drug market and drug control many changes occurred in China. The peak of increase in the number of drug addicts from the second half of the 1910s to the 1930s can be linked to the social and legal changes that occurred in China at the time. Furthermore, in addition to opium consumption, the use of opium derivatives such as heroin (白面儿 *baimianr*, 海洛因 *hailuoyin*) and morphine (吗啡 *mafei*) became widespread, and with it the "needle culture". In those years Chinese drug control has seen the alternation of phases of greater tolerance and phases of strong repression.

After the collapse of the Qing dynasty in 1911, a brief period of warlordism was followed by the Nationalists control. However, during his brief presidency, the revolutionary Sun Zhongshan (孙中山 Sun-Yat Sen) managed to enact the Decree on Banning Opium Smoking in 1912 continuing the same aggressive opium eradication policy pursued by the Qing. However, during the warlord era (1916-1928) opium poppy cultivation flourished encouraged by the warlords who used opium revenues to finance their armies and earned income from various opium-related businesses. In those years and in the 1930s, domestic production increased enormously, and China continued to be the first country for opium production. Its annual production in those years is estimated to be six times the total production of all other nations. Opium cultivation policies went from one extreme to the other in a short time in the early twentieth century: Chinese peasants were first punished by warlords with the death penalty if they refuse to grow opium poppy, then punished with death for cultivating the same opium poppy. In 1924 Sun's policy of control took the form of imposing the government's monopoly on opium. In this way, the government intended not only to control the supply of drugs to drug addicts to limit the spread of drug addiction, but also to derive revenue from the sale of opium. Opium revenue was of paramount importance to civilian and military government at the time, so the complete elimination of opium was more of a symbolic ideal than an achievable reality. However, Sun Yat-sen's attempt to control and suppress opium problem through taxes, effectively failed due to corruption, local resistance and the government's conflict of interest in the opium market²³.

Along the same lines as the Qing government, the Nationalist Government was apparently determined to eradicate the opium plague. The nationalist leader, Jiang Jieshi 蒋介石 (Chiang Kai-shek)

²² R. Bin WONG (2000), pp. 199-203

²³ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 61-76

exploited the control of the opium trade as a means to solve the Nationalists' political and financial difficulties. Farmers continued cultivating opium for living and profit, encouraged and coerced by landlords, merchants, and military and civil officials²⁴. In 1927, the government of Jiang Jieshi launched a three-year prohibition plan to control opium and other narcotics. Among the provisions of the plan, the idea of publicly auctioning opium raised many protests from all levels of Chinese society because of its clear intent of profiting from it. The public pressure for a stronger anti-drug policy led to the passing in 1928 of the Criminal Law of the New Republic which specified fifteen types of drug-related offences. The maximum punishment was five years of imprisonment for manufacturing, selling or smuggling opium, morphine, or heroin or other synthetic narcotic drugs. For other drug-related offences the penalties went from a minimum of six months to a maximum of five years of imprisonment. In the same year, regulations on the prohibition of opium smoking were also enacted²⁵. However, according to the estimates, by 1931, twenty percent of the Chinese population was addicted to opiates with ninety percent of such addicts, accounting for 72 million, using opium, and the rest, accounting for 10 million, using morphine or heroin²⁶.

Although some achievements have been reached by the new laws and policies, the Nationalist government's efforts to ban drugs during this period have been criticized by several commentators for a few reasons: first, the monopoly of the opium trade was clearly the real intent of the government because of the potential tax revenue; second, the proceeds from opium taxes were used in the civil war between the warlords; third, the enforcement of laws and policies has been almost completely hindered by widespread corruption among government and military leaders at all levels; fourth, the presence of extraterritorial jurisdiction and the government's lack of complete sovereignty over China further weakened the application of the new laws²⁷.

In 1935, the Nationalist government amended the Criminal Law. Compared with the temporary criminal law of 1928, the new law increased the penalty from a maximum of five-year imprisonment to life imprisonment for manufacturing, selling, or smuggling opium, morphine, heroin, or other synthetic narcotic drugs and increased the fines for these offences. In the same year, Jiang Jieshi launched the most important Nationalist campaign against opium: the Six-Year-Plan of drug prohibition (六年禁烟 *Liu Nian Jinyan*) with the aim of imposing a monopoly on the opium trade and its profits, and eliminate opium use. The innovative aspect of the plan was that more emphasis was placed on controlling poppy cultivation and opium consumption than in the past²⁸. The penalties

²⁴ LU Hong & LIANG Bin (2008), p. 213

²⁵ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp.62-63

²⁶ HE Yin, Niklas SWANSTROM, *China's War on Narcotics: Two Perspectives*, Washington DC, Central Asia-Caucasus Institute and Silk Road Studies Program, Silk Road Paper, 2006, p.13

²⁷ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.61

²⁸ Adam BAUMLER (2007), p. 177

for drug users were increased and among the methods of government control were the registration of drug addicts, the licenses for the legal use of opium, the division into drug-free and other gradually reduced areas, the creation of detoxification centres²⁹. The central idea of the plan was that opium problem had to be controlled before it was eradicated. In a speech, Jiang relieved foreign powers of the blame for the opium plague, instead blaming the Chinese's lack of determination due to the government's inability to solve the problem. He sought to link the government's ability to control opium with the ability to suppress the problem, legitimizing the government's monopoly on drugs, and a system of suppression and authorization was applied moving from areas without poppy cultivation, to areas where a gradual reduction was required, to areas where cultivation was allowed³⁰. As for heroin and morphine-related activities, the plan was much less lenient. It provided for the death penalty for the production, transport or sale of these drugs. People addicted to morphine and heroin were subject to severe penalties up to the death penalty.

However, the government's plan was unable to seriously affect drug activities due to various factors that have instead stimulated their spread such as internal corruption, local resistance, faltering warlord loyalty, natural disasters, the Sino-Japanese War (1937-1945) and the civil war between the Nationalists and the Communists (1945-1949)³¹.

During the Six-Year-Plan, opium addicts (烟民 *yan min*) had to be registered in the state's opium suppression system. Registering gave them the right to purchase government opium and possibly be treated in a state clinic. Licenses for the use of opium had already been used during campaigns in the late Qing period, but were often used by warlord governments to continue buying opium and getting rich. The new registration system was intended to register all opium smokers in China to understand the extent of the problem and then control and eliminate it. However, the process was not as swift as hoped, and several attempts at registration were repeated. Indeed, many opium users could not afford the registration costs and the government opium costs.

In public opinion and anti-opium propaganda, opium started to be described as a plague that after the first use would inevitably lead to moral decline and the destruction of the smoker's life, and thus officially each opium smoker was considered an addict. The only possibility of salvation laid in registration and treatment at a state clinic (戒烟所 *jie yan suo*).

Registration was forbidden for students, members of the government, the party and the army, as they were considered important people to the state and believed to be able to heal themselves. While members of the élite were thought to have the innate ability to control and eventually eliminate opium

²⁹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 141-145

³⁰ Adam BAUMLER (2007), pp. 200-209

³¹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp.61-63

use, those who belonged to the lower classes had to register and quit the addiction within a certain time limit or, in case of failure, be placed in a clinic. The clinics were at the heart of the nationalist plan for opium suppression and in those years their number soared, hosting hundreds of thousands of opium smokers. The stay in the clinics was paid and partly included medical treatment. The number of people successfully treated compared to those registered was small, due to the lack of government funds, the fact that many could not afford the costs of the clinics and the high relapse rate. Although they were considered an important part of the anti-opium work, those state clinics were often not true clinics. Sometimes they were masked opium dens or small spaces in local hospitals. In any case, there was a lack of money, specialized personnel and medical knowledge of the problem. It was not even clear whether the problem was of a medical nature, therefore solvable by administering medicines, of access to the substance, therefore solvable by isolating patients from contexts in which they could obtain it, or of a moral nature, therefore to be treated by morally reforming patients. Since the government expected to solve the drug problem through the campaign, the clinics were meant to be temporary, so there were neither qualified staff nor standards for care. The administration of opium or derivatives for a gradual detoxification, and other drugs to relieve withdrawal symptoms or treat patients, was widespread.

Most of the treatments took into consideration both the psychological and physical aspects of addiction. From a psychological point of view, an attempt was made to strengthen the will of patients through indoctrination and physical labour. Patients were informed of the dangers of opium for the individual and the society and received political indoctrination. They also had to perform gymnastic exercises and were involved in the production of items to sell to support the costs of the clinic. The work also had to serve the patient's personal growth and provide him with professional training useful for reintegration into society. Patients had to pay a fee to cover the costs of treatment and food, but many could not afford it and many clinics ran out of funds. In the 1930s, the clinics of some provinces took the name of "new life factories" (新生工厂 *xinsheng gongchang*), an expression that indicated both the reconstruction of patients' lives, and that these places increasingly counted on the work of patients to self-finance themselves. For the Chinese state, however, opium addiction was not equally important for all groups of people, so not everyone had the same right to be treated. After the age of sixty, registration was allowed, but it was also allowed to continue smoking opium since age and health, made precarious by the opium habit, made these people unnecessary for the nation. Registration of women, users of refined drugs and non-Han people was of no interest to the state and treatment was not required³².

³² Adam BAUMLER (2007), pp. 200-211

The addiction to drugs such as opium and morphine, and later also cocaine and heroin, was significantly increased by the entry into China of the Japanese. They conducted a narcotics trading campaign to weaken the nation's willingness to resist to their political and military aggression and corrupt the government and the military officials. Since the 1937 when the Japanese invaded China, all the opium and narcotics regulations of the Nationalist government were suspended, drug addicts and peddlers were released, and some people, such as opium traffickers, gangsters, prostitutes, and geishas, were even charged with the task of dispensing opium and narcotics, retail shops were allowed selling opium, while farmers were urged and rewarded for growing narcotics plants³³. The campaign resulted in an increase in the number of drug addicts and an increase in the price of opium due to the drop in domestic production and the collapse of the price of other drugs resulting in a shift from the consumption of opium to that of other narcotic substances³⁴.

As mentioned above, other drugs were treated more severely than opium during those years. This distinction was justified by medical reasons: refined drugs were considered more addictive and more dangerous. In reality, however, the reasons why other drugs were considered worse were mainly political and cultural. On the one hand, opium, although it was prohibited and its consumption became less and less accepted after 1906, had been part of the social life of the Chinese population, its cultivation had given work to many farmers and had been used for medical purposes. Morphine and heroin, on the other hand, have always been associated with the Japanese invasion in Chinese rhetoric. They were associated by the Chinese with the semi-colonial state more than opium. Moreover, these drugs were also the symbol of modernity, they were produced through a chemical process and were not the result of peasant labour. They spread in the urban context even among the lower classes because they were cheap and easy to take. Also from an economic point of view they spread rapidly exploiting the conditions offered by the opium repression campaign which had led to an increase in prices and a limited availability of opium, and being imported by the Japanese, the Chinese government did not have the possibility to control their trade³⁵.

By 1937 according to the data collected by the local nationalist governments, more than four million opium users had registered in China, still a very low figure if compared to what is likely to be true. In fact, it has been estimated that the lowest percentage of opium addicts calculated on the total population was likely to be 2 percent, or ten million. However, opium consumption varied widely

³³ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 65-67

³⁴ Timothy BROOK, "Opium and Collaboration in Central China, 1938-1940", in Timothy Brook, Bob Tadashi Wakabayashi, *Opium Regimes: China, Britain, and Japan, 1839-1952*, Berkeley, University of California Press, 2000, pp. 323-328

³⁵ Adam BAUMLER (2007), pp. 200-209

between regions. In regions such as Sichuan, Yunnan and Gansu where opium poppy cultivation was widespread, estimates show that more than half of the population was addicted³⁶.

In 1940 the campaign's repressive measures became even stricter and it was decided to shoot anyone who tested positive for opium addiction. In Nanjing, where the repression was tougher, executions by public security officers also took place in the streets³⁷.

During the Sino-Japanese War, China continued to try to reduce opium consumption using clinics and propaganda. The use of opium or other drugs was among the behaviours to be avoided for the survival of the nation. Wasting human and financial resources on drugs would have meant the defeat against Japan and the decline of the nation. In April 1940, the Six-Year Plan was declared successfully concluded, even if the problem had not been completely eradicated. In fact, opium continued to be produced and consumed in China, the nationalist government urged to remain vigilant and continued to arrest and punish opium smokers until 1949. In addition, opium and other refined drugs were sold freely in Japanese-occupied areas. However, thanks to the nationalist campaign, opium was no longer a political problem for China, it had been reduced to the state of an ordinary social problem in which the main issue was how to deal with addicts³⁸.

The Chinese Communist Party (CCP) has enacted antidrug policies since its establishment in the 1920s. During the late 1920s and early 1930s, opium poppy cultivation was declared illegal by Soviet governments in the regions controlled by the Communists³⁹. Anti-opium measures were enacted in those areas both during and after the Sino-Japanese War. During the war, anti-drug rhetoric leveraged patriotic tones. The opium monopoly policy in the Japanese-occupied territories was justified with the protection of the nation and those involved in opium-related activities were accused of undermining anti-Japanese efforts and contributing to the Japanese plan to weaken China⁴⁰. The temporary measures and decrees issued in those years were local regulations that took into account different types of drug offenses depending on the circumstances of the area, but generally heavy penalties up to the death penalty were imposed for offenses such as drug cultivation and trafficking, as well as the payment of fines. As already seen for the Nationalists, it can be observed a differential treatment for opium and other narcotic drugs, with harsher penalties imposed for drug related offences involving morphine or heroin. For example, while the penalty for transport of opium varied according to the amount transported, the transport and sell of other drugs such as heroin and morphine was

³⁶ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 69-70

³⁷ Adam BAUMLER (2007), pp. 210-211

³⁸ Ibid. pp. 224-237

³⁹ LU Hong & LIANG Bin (2008), p. 213

⁴⁰ ZHOU Yongming, "Nationalism, Identity, and State-Building: The Antidrug Crusade in the People's Republic, 1949-1952", in Timothy Brook, Bob Tadashi Wakabayashi, *Opium Regimes: China, Britain, and Japan, 1839-1952*, Berkeley, University of California Press, 2000, pp. 380-404

punishable with life imprisonment or death penalty regardless of the amount involved⁴¹. Even for drug addicts, the two approaches of severe punishment and gradual prohibition were combined and a policy of both leniency and severity was adopted: harsher punishments were reserved for morphine and heroin users and more lenient penalties for opium users. For opium users, a limited time was fixed to quit their habit, generally three months if they were younger than 25 years, six months if they were between 25 and 40, and nine months if they were older than 40. Severe penalties were imposed to those drug users who didn't manage to get rid of addiction within the time limit, and if they failed to quit their habit after three times, they were sentenced to death⁴². These laws were generally concise, and the legal technique was relatively rough. However, some ideas, such as the combination of leniency and punishment, were inherited from drug legislation after 1949. The anti-drug legislation since 1949 cannot ignore, due to their social effects, the laws of the late Qing period and the Republic of China⁴³.

For a relatively short period in the 1940s, both the Communists and the Nationalists took advantage of their connection with the illegal opium trade in order to gain revenue. The Nationalist government needed revenue to fight against Communists or recalcitrant militarists, and the Communists relied on opium revenue to resist to the economic blockade imposed by the Nationalists⁴⁴. Except for this period, after Mao Zedong's rise to power, the production and the consumption of drugs have been strongly fought.

After the Sino-Japanese War, during the last part of the civil war, the Communists expressed their will to create a "new China", free from the capitalist influences of which drugs were considered a part⁴⁵. After the founding of the People's Republic of China (PRC) in 1949, the CCP decided to take resolute action to eradicate the widespread problem of opium production, trafficking and addiction with the aim of recovering from over a hundred years of forced imports of opium by the imperialists who invaded the country. In the late 1949, the country's opium poppy cultivation area covered more than 1 million hectares. Out of a population of over 400 million people, more than 300.000 people were engaged in drug production and trafficking, and there were an estimated 20 million drug addicts. Although narcotics trade was illegal, drug dealers and smugglers were around 600.000, and in the

⁴¹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp.86-88

⁴² Ibid. pp.67-68

⁴³ Chu CHENG, 褚宸舸, "Woguo jindulifa de lishiyanjin (1949-1998)" 我国禁毒立法的历史演进 (1949-1998) (Historical Evolution of China's Anti-drug Legislation (1949-1998)), *Jiangsu Jingguan Xueyuan Xuebao*, 23, 2, 2008, p.20

⁴⁴ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.72

⁴⁵ ZHOU Yongming (2000), pp. 381-382

early 1950s they were more than 500.000. Among them, over 10 percent were state officials abusing their position to provide protection for drug trafficking⁴⁶.

For the first time under Communists' control, a national campaign against opium was launched in 1950. To inaugurate the series of important anti-drug documents of the first half of the 1950s, which included laws and decrees issued by the CCP, as well as circulars, notices and instructions both at national and regional level, on February 24, 1950 the Communist government enacted the General Order for Opium Suppression (关于严禁鸦片烟毒的通令 *Guanyu Yanjin Yopian Yandu de Tongling*)⁴⁷. This anti-opium administrative order required local authorities, such as governments and military committees, to take measures for eradicating drug abuse, addressing both the supply and demand sides of the problem. The instructions included, among others, conducting anti-drug propaganda, confiscating drugs, banning the cultivation of opium poppy, the production, sale and trafficking of opium, the registration of drug addicts and the construction of detoxification centres. However, it adopted a lenient approach to deal with drug addiction and it made it an administrative offence. The public security organs were required to register drug users at the city level, while at township and village level the people's government was in charge of the registration. Addicts had to quit their habit and hand over their drug use equipment to the authorities within a set time limit and were subject to punishment only if they refused to register or could not give up the addiction. In that case, they would be heavily fined or sentenced to administrative detention for "coercive rehabilitation"⁴⁸.

Although the government was ideologically determined to eradicate the drug problem, in the initial phase of the campaign the attention of the Communists was more focused on rebuilding the economy heavily damaged by the civil war, restoring the social order and fighting against the Americans in Korea. The lack of sufficient resources and the presence of more pressing issues resulted in the absence of a systematic plan for the campaign and this first wave of campaign was not completely effective. At the end of the year, stricter methods of repression were adopted mainly through the imposition of stricter penalties for drug offenses, in particular by prohibiting the commutation of the prison sentence into fines. The second wave of drug campaigns, launched in 1952, was the most effective. The push to conduct a more effective anti-drug campaign was actually the consequence of the information that emerged during the campaigns of the "Three Anti" (三反 *Ssan Fan*) (1951-2)

⁴⁶ LIANG Bin, "Drugs and its control in the People's Republic of China (1949-present)" in Cao Lique, Ivan Y. Sun, Bill Hebeton, *The Routledge Handbook of Chinese Criminology*, Routledge, 2013, p. 183

⁴⁷ LIANG Bin (2013), p.184; CHU Cheng 褚宸舸 (2008), p. 22

⁴⁸ Sarah BIDDULPH, *Legal Reform and Administrative Detention Powers in China*, New York, Cambridge University Press, 2007, p.77

against corrupt cadres, and the "Five Anti" (五反 *Wu Fan*) (1952)⁴⁹ against the national bourgeoisie, which revealed a link between many cases of corruption and drug trafficking. On April 15, 1952, the Central Committee of the CCP issued the Directive on the Eradication of the Drug Epidemic (关于肃清毒品流行的指示 *Guanyu Suqing Dupin Liuxiang de Zhishi*) in which it was proposed to launch an anti-drug campaign based on the information acquired through the Three and Five Antis with the aim of definitively solving the problem. The main focus of this second round of campaigns was drug manufacturers and traffickers who were severely punished. Therefore, the campaign was mainly conducted in large cities, ports and major drug production areas. The campaign began in August 1952 and in December of the same year the Ministry of Public Security said it had successfully concluded in the targeted areas, reporting a total of more than 82.000 arrests. In contrast to the first wave of campaigns, the second wave was characterized by a systematic plan, intense involvement of the masses and tougher penalties for drug-related offenses and was conducted on a national scale⁵⁰. The effectiveness of the campaign was strengthened by the establishment of neighbourhood committees that provided surveillance and education to people from all walks of life. Addicts have been forced to break the habit, but few official records are available on the number of drug addicts rehabilitated. The most relevant novelty was the mobilization of the masses to identify drug addicts and mass education through propaganda meetings on the harm caused by narcotics to individuals and to society⁵¹. To mobilize and educate the masses the Trade Unions, the Communist Youth League, the Women's Federation and other social groups organized meetings, while the public security organs organized demonstrations in which unregistered drug addicts were arrested. These rallies were quite effective in their purpose of frightening drug addicts and convincing them to register. The appeal to citizens to report drug offenses of which they were aware to the authorities was successful and millions of accusation letters were sent. However, despite the success of drug offences punishment strategies, the imposition of the punishment at the time was still poorly regulated by law⁵². At the end of the second wave, after three years of campaigns, the authorities proclaimed China to be a "drug-free country". China declared that it had solved its drug problem, which had plagued the country for more than one century. Over the next three decades or so, while the rest of the world, including Western countries, continued to struggle against the proliferation of the narcotic drug industry, China managed to control it⁵³. However, in the 1950s this success was hidden from the rest

⁴⁹ The Three Antis Movement targeted: corruption, waste and bureaucracy. The Five Antis Movement targeted: bribery, tax evasion, theft of state property, shoddy work, and cheating on government information.

⁵⁰ ZHOU Yongming (2000), pp. 382-388

⁵¹ LIANG Bin (2013), p.185; LU Hong & LIANG Bin (2008), p. 214

⁵² Sarah BIDDULPH (2007), p.79-80

⁵³ HE Yin, Niklas SWANSTROM, (2006), p.37-38

of the world. In fact, it wasn't until the 1960s and 1970s that the Chinese Communists claimed credit for ridding the country of drugs. There are no reports of campaigns from those years starting from 1952, except in government archives. The main reason is that the US had accused China of exporting drugs to Japan. Although there was no evidence of government involvement, the Central Committee decided to suspend the publication of news related to the suppression of the drug problem in newspapers and other sources of information, in order to prevent Americans from spreading rumours about China⁵⁴.

What the Communist government achieved was an unprecedented success in the history of drug control in China. However, it was not achieved through a legislative process, but through a state-building process at a time characterized by major economic, political, and social changes. Opium had been considered the evil of the Qing Era and the period of foreign imperialism and had cost China a reputation as the "Sick man of Asia" (东亚病夫 *Dongya bingfu*). The creation of the new Communist society could not ignore the elimination of this negative and weak image of the country. Therefore the eradication of the problem was of vital importance for the Communist Party, to resolve in its favour some of the ideological contrasts which China of the time was characterized by, namely Old China against New China, Nationalists against Communists, Imperialists against Chinese people, and to demonstrate to the world the effectiveness of a Communist society. Furthermore, the Communist government linked the anti-drug campaign to the concepts of nationalism and patriotism, inviting the population to participate in the struggle as a patriotic act. Another reason for the success of the anti-drug campaigns was the construction of an effective social control system that included neighbourhood committees, public security committees, the household registration system, and mandatory registration for drug addicts. These mechanisms, imposed on a national scale, limited the movements of the population and in particular of drug addicts and traffickers. Mass demonstrations and public trials were also frequently used as a means of mobilization and propaganda. The changes in economic and political policies implemented by the government also contributed to the success of the anti-drug work. The centralized economy, for example, had an important impact on the reduction of opium cultivations. Furthermore, China's isolation from the rest of the world and the policy of self-sufficiency implemented after 1949 helped to exclude China from the main opium trade routes and international trafficking⁵⁵.

Although the success of the fight against drugs was not the result of a developed anti-drug regulatory system, anti-drug legislation prior to 1978 continued to be based on the norms of the early 1950s, even though some drug laws and regulations were also enacted in the 1960s and early 1970s as well.

⁵⁴ ZHOU Yongming (2000), pp. 388-390

⁵⁵ LIANG Bin (2013), p. 186

The relevant policies and documents of the CCP and local governments at all levels were the main norms and this feature was maintained on various levels after 1978. The focus of anti-drug legislation in the early 1950s was local, at regional level, rather than central. The disadvantage was some degree of decentralization, but the advantage was that it could adapt to local conditions, giving full play to the initiative of local governments, and this was necessary to complete the task of prohibiting drugs in a relatively short period of time⁵⁶. In terms of legislative techniques, the local legislation is also worth mentioning. These laws had some characteristics that made them effective: a reward system for drug offenders who voluntarily confessed to the crime they committed, repented, or provided information for criminal investigations to the authorities; serious crimes such as the armed transport of drugs, the cultivation, production, transport of drugs and the management of opium dens have resulted in severe penalties, including the death penalty; various forms of economic sanctions and corporal punishment have been combined to punish some crimes; the laws and decrees were vague and concise in their content, so as to leave wide discretion to the local authorities in the application of sanctions⁵⁷.

In the early 1960s, in border areas and places where opium was historically present, the problems of private poppy cultivation and drug trafficking appeared intermittently. Drug problems were still present in some regions of China such as the mountainous areas in the Southwest of the country, especially Yunnan and Sichuan. In order to eliminate the resurgence of drug problems in a timely and effective manner, the Central Committee of the Communist Party of China issued the Notice of the Central Committee on Prohibition of Opium and Morphine (中央关于严禁鸦片、吗啡毒害的通知 *Zhongyang Guanyu Yanjin Yopian, Mafei Duhai de Tongzhi*) in 1963. It was pointed out that stocking and selling illegal drugs, cultivating opium poppy plants, setting up opium dens and using drugs, should be regarded as crimes and should be severely punished. Drug addicts should undergo compulsory detoxification, and special agencies were designated to strictly control drug addicts who have taken opium or morphine injections. Under the supervision of the masses, it could be implemented a planned, organized, and gradual compulsory abstinence within a time limit. In areas where drug abuse was severe, a collective abstinence could be applied. Anyone who took drugs but voluntarily stopped and confessed his criminal behaviour could be dealt with leniency.

In the 1970s, the drug problem recurred in a certain area of China. In 1973, the State Council issued the Notice on the Prohibition of Illegally Cultivating Opium Poppy, and Trafficking and Smoking Opium and Other Drugs (关于严禁私种罂粟和贩卖、吸食鸦片等毒品的通知 *Guanyu Yanjin Sizhong Yingsu he Fanmai, Xishi Yopian Deng Dupin de Tongzhi*), reaffirming the 1950 Executive

⁵⁶ CHU Cheng 褚宸舸 (2008), p. 23

⁵⁷ LIANG Bin (2013), p.185

Administrative Ministry's General Order for Opium Suppression, and encouraging the masses to fight against illegal and criminal activities such as illegally growing opium poppy and trafficking and using opium and other narcotics. It also strengthened the punishments for smugglers and transporters of drugs, and included a stricter detoxification plan to force drug addict to get rid of addiction⁵⁸.

In any case, it can be said that after the first half of the 1950s the drug problem in China had been largely eradicated and kept under control. In the two decades that followed, drugs did not constitute an economic or social concern for the Chinese government.

⁵⁸ Ibid.; CHU Chenge褚宸舸 (2008), p. 22

CHAPTER 2: ECONOMIC, SOCIO-CULTURAL AND POLITICAL CONTEXT OF THE DRUG PHENOMENON FROM THE REFORM AND OPENING UP PERIOD

Before going into the legislation, the second chapter will briefly describe the drug phenomenon and the drug control policies from the 1980s to the first decade of the 2000s.

The economic, social and cultural context in which the phenomenon has re-emerged will be examined. The evolution of the Chinese government's policies on drug control, changes in consumption and China's international relations on drug control will then be described.

2.1 Factors that led to the resurgence of the drug problem

With the Reform and Opening Up (改革开放 *Gaige Kaifang*) under Deng Xiaoping 邓小平, from 1978 China witnessed the resurgence of the drug problem. The considerable size of the phenomenon, closely linked to economic reforms and the reopening of the country towards the rest of the world, can be explained by the combination of various factors.

2.1.1 Economic factors

Since the late 1980s, China has seen the transition from a planned economy to a market economy, officially defined as a "socialist market economy with Chinese characteristics" (中国特色社会主义市场经济 *zhongguo tese shehuizhuyi shichang jingji*). The enormous impact of economic reforms and the new economy on society rehabilitated the ideal of enrichment, which was no longer a source of shame, but of pride. People started to be willing to pay any price for being rich, including committing crimes. In this context, from Chinese people's perspective, on the one hand drug trafficking emerged as a means to potentially large gains⁵⁹. It can therefore be said that the market economy and economic reforms have not only been the backdrop but have also indirectly encouraged the emergence of drug offences. On the other hand, the improvement of living conditions, the growth of per capita GDP and the consequent increase in purchasing power have led to the formation of an ever-larger middle class with the economic availability to purchase products, including drugs. The price of the latter also fell in relation to economic development and purchasing parity power. This situation is particularly descriptive of coastal urban areas which, in addition to be the most economically developed and prosperous areas, were also those with the greatest problems of drug abuse, including the new recreational drugs⁶⁰.

⁵⁹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.96

⁶⁰ HE Yin, Niklas SWANSTROM (2006), pp.15-16

Furthermore, the "open door" policy reopened China's relations with the rest of the world. In 1979 and 1980, the first Special Economic Zones (SEZs) for international trade and foreign investment were established in Guangdong and Fujian provinces. Despite the success of the open door policy, one of the negative consequences of the end of the isolation in which China remained in the 1960s and 1970s was the increasing involvement in international drug trafficking, especially from the Golden Triangle and the Golden Crescent⁶¹.

2.1.2 Geographic factors

Narcotic drugs initially re-emerged in the southwestern region of China, such as in Yunnan and Guangdong provinces, mainly because of the physical vicinity of these provinces to nations where illicit drugs, especially opium, were historically produced and trafficked, such as Burma/Myanmar, Thailand, and Laos, and because these provinces already had a tradition of tobacco and opium smoking⁶². Until around 1990, China mainly served as a drug trafficking transit route, starting from the Golden Triangle, where the three aforementioned countries border each other, and from the mountainous peripheries of Afghanistan, Iran, and Pakistan, i.e. the Golden Crescent, via China towards lucrative markets such as Hong Kong and the United States⁶³.



Fig. 2 Golden Triangle and Golden Crescent.

Source :

<https://getorgot.blogspot.com/2016/04/golden-triangle-golden-crescent.html>

Since the foundation of the PRC, due in part to the limited consumer market, partly to the repressive drug control system and partly to the greater attractiveness of other countries as producers and transit regions, China has not been seriously involved in international drug networks⁶⁴. However, in the 1980s and 1990s, not only the international drug trafficking, but also the domestic market revitalised, to such a great extent that many commentators stated that the domestic Chinese market had become the primary target of traffickers⁶⁵. China's rapid economic growth triggered a growing demand for narcotics, making the country a lucrative market with a consequent rising attraction from transnational criminal networks involved in

⁶¹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 97-98

⁶² LU Hong & LIANG Bin (2008), p. 215

⁶³ HE Yin, Niklas SWANSTROM (2006), p.38

⁶⁴ Ibid. p.14

⁶⁵ Sarah BIDDULPH (2007), pp. 177-179

drug trade. The growing economic liberalization has gradually made China more vulnerable to drug trafficking by multiplying the number of cross-border transactions between China and neighbouring countries in Southeast Asia, Central Asia, Afghanistan, and North Korea. This has led to a development of the economies of the countries involved, but also to an increase in drug trafficking, whose control, given the number of commercial exchanges between the nations, is impossible to monitor with absolute effectiveness⁶⁶. In addition, in the late 1970s, the Southeast Asian countries, in particular, Thailand and Burma/Myanmar, adopted more stringent enforcement against drug trafficking. This forced organized drug groups in these countries to use China as a transit route to the international market outside Asia. This was another factor that turned China into a lucrative market because of the spill-over effect on domestic abuse. In fact, large amounts of the narcotics smuggled tend to be consumed along the way, although initially in China the negative effects were partly reduced by the low purchasing power of the population⁶⁷.

In 2000, the Chinese government declared that every province, autonomous region or municipality was to some extent involved in drug-related activities, and that China was no longer just a transit country for the drug trade, but also an important consumer country⁶⁸.

2.1.3 Social and ideological factors

Not only economic but also social and ideological factors contributed to the re-emergence of the drug problem, such as the process of urbanization of the population, the migration of the rural population to cities, the collapse of the *hukou* system, the increase of social stratification and the consequent increase in social inequalities, and the development of new values, ideas and lifestyles among the new generations. The economic reform led from the 1980s to a sharp drop in the percentage of rural residents and the beginning of the urbanization process. The population of rural areas began to pour into inhabited centres giving rise to an important migratory phenomenon. The number of migrants, who lacked *hukou*, called “floating population”, continuously increased at a rapid pace, and from 20 million in 1993 reached around 147 million in 2005. With the development of urbanization and migration, the *hukou*, the household registration system, began to be questioned, despite the government’s efforts to keep it alive and to monitor migrants. It is precisely in the cities and in particular among the floating population that drug-related activities have once again spread. Migrant workers looking for earnings were more easily involved in illegal activities and the difficult socio-

⁶⁶ HE Yin, Niklas SWANSTROM (2006), pp.15-16

⁶⁷ Ibid. p.38

⁶⁸ State Council Information Office of the People’s Republic of China 国务院新闻办公室, White Paper on Narcotics Control, June 2000, <http://www.china.org.cn/e-white/1/index.htm>

economic context in which they lived combined with poor education also made them more prone to the use and abuse of drugs. In fact, another effect of the economic growth was the increase in social stratification with the consequence of an increase in social inequality, especially between urban and rural residents, between residents of different geographical areas and with different occupations. The increase in the unemployment rate also contributed to the drug problem. The profound economic and social changes also brought with them new ideas, values and lifestyles, weakening the old ideology. Society began to be more economically than politically driven and the government tried to take measures to counter the emergence of an ideological crisis and the reappearance of old problems that were believed to have been solved, such as drugs and prostitution, and to defend itself from the "spiritual pollution" (精神污染 *jingshen wuran*) of the West. However, the government's efforts have not been sufficient to maintain the effectiveness of social control mechanisms and ideological beliefs⁶⁹. All these changes have contributed to some extent to the reappearance and spread of drug-related problems.

In the 1980s, Chinese official sources considered drug problems, such as trafficking and use, to be a consequence of Western capitalism, inherent contradiction in Western society and reflection of the value system of the West. Drug use in Western countries was considered the consequence of the spiritual emptiness (精神空虚 *jingshen kongxu*) and associated with economic recession and unemployment⁷⁰. The aim of this propaganda was clearly to compare the failures in the fight against narcotics of Western nations with the success of the drug campaigns of the 1950s in China, whose credit was attributed to socialism. The government intended to demonstrate the superiority of the socialist system by highlighting the successes of the latter in the face of the failures of capitalism.

At first, China did not realize the extent and seriousness of the re-emergence of the drug problem. The government deemed possible to solve it by placing the blame for the reappearance of drugs on the values of Western society, and urging the population to distance themselves from it by relying on the strength of the values and ideology of the country. China initially seemed to believe that it was possible to restore the repressive methods that had been successful in the isolation context of the 1950s in the new economic and ideological context.

However, in the 1990s, when China realized the extent of the re-emergence of the problem, the rhetoric against Western capitalism almost disappeared and was replaced by a firm will to fight against drugs, calling on China's history in the struggle to the problem and invoking "people's wars" to avoid repeating history. Participating in the war against narcotics was considered a patriotic act⁷¹.

⁶⁹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 98-100

⁷⁰ LIANG Bin & LU Hong (2013), p. 310

⁷¹ Ibid. p. 311

In 1998 the Chinese government organized the two-month National Exhibition on Drug Control with the theme “Yes to life, no to Drug”, which attracted 1.66 million visitors, as a publicity tool with the aim of educating people and raising public awareness about the drug problem⁷². In this occasion, President Jiang Zemin 江泽民 declared that drug campaigns were central to the fate of China as a nation, and encouraged the population to participate using the slogan: "It's about the rise and fall of the nation" (事关民族兴亡 *shi guan minzu xingwang*). Drug campaigns also remained tied to Chinese socialism and its construction. The government believed that China as a socialist nation was still able to successfully control narcotics, as the CCP had done in the 1950s⁷³. However, as demonstrated by the setting up of the 1998 exhibition, the Chinese government realized that it could not suppress the drug problem with the same methods used in the 1950s and understood the need for a different approach such as using nationwide prevention and education campaigns⁷⁴.

2.2 Drug control policies

In China, punitive policies and drug control have always been linked to national political narratives: ideals, such as the class struggle in the Maoist period and, in the post-Mao period, the ideals of social order and stability, of building a harmonious society, and more recently of social management, have legitimized the repressive action of the anti-crime campaigns conducted by the police⁷⁵.

While the repressive methods legitimized by the government's rhetoric have remained a constant in China's drug control policies, it must nevertheless be recognized that from the 1980s to the first decade of the 2000s they underwent significant changes. Until the late 1990s, the focus of anti-drug policy in China was the severe repression of drug trafficking, and it was characterized by a punitive approach to all drug offenses, modelled on the policies of the 1950s. But since the late 1990s, China has acquired a greater awareness of the problem and has understood the need to adapt its approach in the fight against drugs to the changes that have taken place in the country and in the drug phenomenon at national and international level.

2.2.1 From 1980s to early 2000s: “strike hard” policy

Deng Xiaoping tried to fight drug problems using the same strategies adopted in the 1950s. At that time of economic transition to a market economy, the focus of government policy was on economic

⁷² State Council Information Office of the People's Republic of China 国务院新闻办公室, White Paper on Narcotics Control, June 2000, <http://www.china.org.cn/e-white/1/index.htm>

⁷³ LIANG Bin & LU Hong (2013), p. 311-12

⁷⁴ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p. 117

⁷⁵ Susan TREVASKES, “Drug Policy in China”, in Fafa Rahman, Nick Crofts, *Drug Law Reform in East and Southeast Asia*, Lanham (Maryland), Lexington Books, 2013, pp. 222-8

development and, according to Deng's social stability doctrine, social stability was the "essential precondition for economic development". Therefore, drug control policies were also based on the ideal of maintaining social stability and social order at all costs in order to enable the country's economic progress.

From the early 1980s to the early 2000s, the ideal of maintaining social stability was translated into practice by the Chinese government in a policy of "strike hard" campaigns against social order crimes in general, including drug crimes. These campaigns consisted mainly in periodic aggressive police crackdowns, in which suspected offenders were sentenced through accelerated mass trials. Drug crimes, involving both drug trafficking and transporting, were treated with "severe and swift punishment" (从重从快惩罚 *congzhong congkuai chengfa*).

The punishments for criminals became more severe, for example the number of crimes punishable by the death penalty was increased and with it the number of death sentences grew significantly during the campaigns. Furthermore, the investigations and arrests by the police forces took place in a short time, also due to the fact that the arrest quotas set during the campaigns induced the police to carry out mass arrests to prove that they had reached the achievements set⁷⁶. At the end of the 1990s, 20 percent of those convicted of drug trafficking received death sentences or life imprisonment and 68 percent at least five years in prison⁷⁷.

The punishment of drug crimes was made "severe and swift" by decisions such as the one in the early 1980s to shift the responsibility for approving death sentences from the Supreme People's Court (SPC) to provincial courts, shortening the time of the process and entrusting the fate of those condemned to the influence of provincial Communist Party leaders determined to crack down on the drug problem that was re-emerging. During these two decades of anti-crime campaigns, authorities also used to sentence drug criminals to death for drug trafficking and transportation at public stadiums in front of a huge public. These "punishment rituals" were used as warnings for the population⁷⁸.

In the early 1980s, two important documents were published to strictly prohibit all private poppy cultivation, drug trafficking, and drug use in the country: in 1981 the State Council issued the Notice Restating the Strict Prohibition of Opium and Drug Taking, and in 1982 the Urgent Directive on the Problem of Complete Prohibition of Opium were issued by the Central Committee of the Communist Party of China (CCCPC) and the State Council. Their joint efforts led to the first antidrug campaign of the Reform Era in 1983, whose main target area was the south-west border adjacent to the Golden Triangle. It was mainly focused on impeding outside organized criminal organizations to use China

⁷⁶ Bin LIANG, "Severe strike campaign in transitional China", *Journal of Criminal Justice*, 33, 2005, pp. 391-2

⁷⁷ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p. 114

⁷⁸ Susan TREVASKES (2013), p. 222

as a transit country for drug trafficking⁷⁹. This antidrug campaign was part of the Strike Hard (严打 *Yanda*) campaign, a huge nationwide anti-crime campaign conducted in China from 1983 to 1986, with the support of Deng Xiaoping, and launched to resolve the situation of worsening of public safety following the Cultural Revolution (文化大革命 *Wenhua Dageming*) (1966-1976). During this campaign, for the first time after the founding of PRC, drug-related crimes were considered one of the major targets⁸⁰. Since then, drug control has been gradually carried out under the overall layout of strike hard.

There have been two other severe crackdowns on drug-related crimes. The first was a campaign to eliminate the "Six Evils" (六害 *Liu Hai*) from late October 1989 to January 1990. It was launched in response to the social and political instability which followed Tian'anmen Square protest in June 1989 with the aim of eliminating Western pollution and the threats to socialism. The campaign shared similarities with a strike hard campaign, even if it was not officially defined that way. The Six Evils, also known as "pornography, gambling, and drugs", included prostitution and production and sale of obscene materials, abduction and trafficking of women and children, drug offences, gambling, and the use of feudal superstition to defraud money and harm people. Many of the behaviours targeted in the Six Evils campaign were not crimes, but they could have fostered the development of crimes. They represented a potential danger to society and caused the upheaval of the socialist social order and spiritual civilization that the CCP was building⁸¹.

The second crackdown was the second nationwide strike hard⁸², from April to July 1996, focused on serious violent crimes such as homicide, robber, rape, drug crimes, organised crimes, and other serious criminal offences⁸³.

The system of law enforcement through the use of police-led antidrug campaigns, institutionalized by the National People's Congress in 1983, became a permanent feature of China's drug control policy. Local police forces began to routinely conduct crackdowns actions against drug trafficking and illicit drug use with sentencing rallies and mass executions, especially prior to special occasions such as China's National Anti-Drugs Day on June 16, or, successively, the International Day Against Drug Abuse and Illicit Trafficking, on June 26. This anniversary was established by the General Assembly of the United Nations (UN) in 1987 and China quickly supported it⁸⁴. Actually, campaign-style law enforcement has led to many negative consequences, including abuse of police power in

⁷⁹ DAI Mengyan, GAO Huan (2014), p. 207

⁸⁰ HE Yin, Niklas SWANSTROM (2006), p.39

⁸¹ Sarah BIDDULPH (2007), pp. 136-9

⁸² A third nationwide anti-crime campaign was conducted from 2001 to 2003.

⁸³ Ibid. pp. 132-5

⁸⁴ LIANG Bin & LU Hong (2013), p. 305

administrative sanctions, excessive punishment, corruption, and, not least, ineffectiveness in reducing crime rates.

To conduct its anti-drug campaigns, the Chinese government has chosen the areas most affected by drug-related problems. Between 1993 and 1996, for example, the Ministry of Public Security (MPS) launched a campaign against drugs and firearms in the southwestern border areas, as a result of which many major drug distribution centres, such as those in Yunnan, were closed down. This was the first in a series of government-led campaigns in the late 1990s in the most affected provinces, such as Yunnan, Guangdong, Gansu, Guizhou, and Sichuan. However, despite government efforts and severe punishments for drug crimes, including the death penalty, the economic poverty and proximity to the Golden Triangle of those areas ensured that the local population continued to be involved in drug trafficking and smuggling activities. With the spread of synthetic drugs, production and manufacturing sites have appeared throughout the country, since they do not require particular geographical conditions⁸⁵.

2.2.2 Since 2000s: combining “leniency and strictness”

While cracking down on drug-related crimes, especially drug trafficking, was prioritized from 1978 to the late 1990s, in the early twenty-first century a dramatic change in policy occurred, after the government under Hu Jintao 胡锦涛 began supporting the importance of a “Harmonious Socialist Society” (社会主义和谐社会 *Shehui Zhuyi Hexie Shehui*). The priority of government policies became the elimination of the “disharmonious factors” of society, which included reducing the number of people addicted to drugs. To do this, the government began to advocate the use of more “people-oriented” methods than previous punishment-oriented methods, such as more humane forms of treatment for drug abuse and addiction⁸⁶.

To describe its efforts in the fight against the re-emerging drug problem, the Chinese government in 2000 also published a White Paper on Narcotics Control⁸⁷, in which it declared to maintain the hard-line in drug control, to strengthen related legislation, to crack down on drug-related crimes, and to exert strict control over precursor chemicals. The document also describes the treatment and rehabilitation of drug addiction, and the government's commitment to inform and educate the population and to develop international cooperation in drug control.

The key principles of the new anti-drug policy emerge from the document:

⁸⁵ DAI Mengyan, GAO Huan (2014), pp. 208–9

⁸⁶ Ibid. p. 209

⁸⁷ State Council Information Office of the People's Republic of China 国务院新闻办公室, White Paper on Narcotics Control, June 2000. <http://www.china.org.cn/e-white/1/index.htm>

- “Leniency and strictness”: China's policy towards crimes in general, including drug crimes, has undergone profound adjustments, and a new approach which balanced leniency and strictness has been proposed as opposed to the strike hard approach. The new policy consisted in giving severe punishment to a minority of criminals who committed serious crimes, and less severe punishment to the majority of them.
- The “four prohibitions simultaneously” (四禁并举 *sijin bingju*) (prohibition of planting, of manufacturing, of trafficking, of using) (禁种、禁制、禁贩、禁吸 *jinzhong, jinzhi, jinfan, jinxi*): the government aimed to manage drug control by acting on multiple fronts simultaneously and focusing on both the causes and symptoms of the problem.
- Prevention-oriented approach: in the early 1990s, the Chinese government did not attach great importance to the prevention of drug use, but since the second half of the 1990s it has understood the need for a change of approach and has started investing in prevention to counter the spread of drug use, and launched an educational campaign to raise awareness of the dangers of drug use. Special importance has been attached to prevention among teenagers and young people, among which there was an increase in consumption of drugs, and governments at all levels included drug education in primary and middle school curricula⁸⁸.
- Strict law enforcement: in the context of legal system reform, China has paid increasing attention to conducting drug control work under the law, enacting new drug control laws and regulations on the management of narcotics, psychotropic substances, and chemical precursors, on the prevention and punishment of drug-related crimes, and on the treatment of addiction.
- Comprehensive management of the drug problem: drug control is a complex system that involves many aspects of the country's reality including economy, culture, law, education, medical and social assistance. Therefore, it requires a well-rounded approach that takes into consideration the problem in its entirety and also involves the participation of all layers of society.
- International cooperation: China realized that a return to the pre-reform economic situation was not possible, as the country's drug problem was no longer a national problem, but increasingly linked to a global drug market. Therefore, China's attempts at drug control could not be separated from international cooperation in the fight against drugs. Formally this meant adhering to the United Nations (UN) Conventions on Narcotic Drugs and Psychotropic Substances in the second half of the 1980s. China's commitment to international cooperation

⁸⁸ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 118-119

has also involved providing concrete aid to other countries in the fight against drugs strengthening bilateral and multilateral cooperation, and since the 2000s also seeking cooperation and support from other countries in the Chinese war on drugs⁸⁹. The Chinese government has stated that it supports international cooperation by applying the three principles of broad participation and shared responsibility; full implementation of a comprehensive and balanced international drug control strategy; and alternative development support to promote a permanent solution to the drug problem⁹⁰. The country participated in international cooperation for antidrug campaigns mainly in two ways: first, the participation to all kinds of antidrug conferences and activities jointly organized by the UN and relevant countries; second, the strengthening of cooperation with the Association of South-East Asia Nations (ASEAN), especially with the countries of the Golden Triangle. Cooperation between China and these countries includes the exchange of information to jointly resolve drug trafficking cases and the professional training of drug officials from neighbouring countries of the Golden Triangle. China has also invested hundreds of millions of RMB in developing alternative opium poppy cultivation in countries such as Burma / Myanmar and Laos by providing technological and agricultural support to advance economic development and reduce opium poppy growing areas of the regions of border of these countries⁹¹.

Until the Anti-Drug Law came into effect in 2008, these principles guided anti-drug policies, but did not have a legislative basis.

Since 2003, large-scale generic anti-crime campaigns have given way to "specialized campaigns" (专项斗争 *zhuanxiang douzheng*) focusing on a single type of crime, such as the specialized campaign of 2005. On April 15, 2005, the Politburo Standing Committee (PBSC) of the CCCPC held a meeting to discuss drug policy. It was chaired by Hu Jintao who launched the "People's War on Drugs" (禁毒人民战争 *Jindu Renmin Zhanzheng*), a nationwide antidrug campaign followed by a five-year plan against narcotics which was issued by the State Council. China showed to be more committed to the fight against drugs through a stricter law enforcement, public campaigns to raise awareness of the problem, more flexible treatment and rehabilitation measures, and more productive international cooperation.

⁸⁹ Ibid. p.98

⁹⁰ State Council Information Office of the People's Republic of China 国务院新闻办公室, White Paper on Narcotics Control, June 2000. <http://www.china.org.cn/e-white/1/index.htm>

⁹¹ CHEN Zhonglin, HUANG Kaicheng, "Drug Problems in China. Recent Trends, Countermeasures, and Challenges", *International Journal of Offender Therapy and Comparative Criminology*, 51, 1, 2007, pp. 106-7

To increase public awareness of the drug problem, with the aim of facilitating drug control work, the governments at all levels and drug control departments launched propaganda campaigns against the dangers of drug abuse and prevention campaigns via newspapers, radio and television.

The work of mobilizing the population was also carried out thanks to the promotion by the government of the establishment since the 1990s of "drug-free communities" (无毒社区 *wudu shequ*), or communities free from the use, trafficking, cultivation, and manufacturing of drugs. The initiative required the mobilization of citizens through the assignment of responsibilities to the families of the communities by the leadership of the community party committee and local governments. This strategy started in the 1990s has obtained many successes and by the end of 2004, 48,524 drug-free communities and 29 drug-free counties had been certified⁹². The first drug-free community was founded in Baotou, Inner Mongolia, in 1994. There, small social help and education groups, aimed at mobilizing local community members, organized drug prevention work, and helped continue the rehabilitation work for people released from coercive drug rehabilitation centres. It was originally at the street committee level, and then it was extended to a substantial number of city organizations⁹³. Baotou's community experimented the so-called "dry method" or "cold turkey" detoxification which doesn't use replacement medicine, save for small amounts of anodyne and antipsychotics to alleviate the symptoms of a few serious drug addicts. Instead, the practice consists in placing patients in an environment free of any source of drugs and supervising them through the groups of help and education. In 1999, the National Narcotics Control Commission (NNCC) expanded the drug-free communities' program, calling for the mobilization of all citizens for anti-drug activities. Small groups of citizens lead by the party committee of the community and the local government at street or township levels, focused mainly on supervision and assistance to people released from coercive drug rehabilitation by paying home visits, even random ones, by talking to them periodically and by providing them with assistance with their everyday life problems⁹⁴.

Furthermore, the drug control work was enhanced by public participation. For example, in ten provinces, autonomous regions and municipalities including Yunnan and Shanghai, people were encouraged by a reward mechanism to inform the police about drug-related offenses⁹⁵.

A year after its inception, the People's War on Drugs approach changed from a campaign-style approach to a "comprehensive management of public order" (CMPO) approach to crime control, which encouraged inter-agency cooperation and crime prevention. Since 2006, the CMPO concept has been revised by integrating more community-based and governmental programs to address the

⁹² CHEN Zhonglin, HUANG Kaicheng (2007), p. 106; LU Hong, Terance D. MIETHE, LIANG Bin (2009), p. 118

⁹³ Sarah BIDDULPH (2007), pp. 179-181

⁹⁴ CHEN Zhonglin, HUANG Kaicheng (2007), pp.105-6; Sarah BIDDULPH (2007), pp. 179-181

⁹⁵ HE Yin, Niklas SWANSTROM (2006), p. 45

growing drug problem. The combination of comprehensive management and community-governmental programs resulted in the concept of “social management innovation” (社会管理创新 *shehui guanli chuangxin*). 2006 was a significant year for the change in China's drug strategy in the twenty-first century. The MPS's traditional reliance on strike hard campaigns gradually declined, and the Narcotics Control Bureau (NCB) institutionalized an "all-rounded" approach. In previous campaigns and in 2005, the various narcotics control agencies, such as the border police, criminal investigators, customs police and the transport and railways police, were required to work independently, but since 2006, the new strategy has encouraged inter-agency and intra-agency cooperation. These agencies had to work together on five different fronts called by police authorities the five anti-crime campaigns "battles" or "offensive" (战役 *zhanyi*), which can be summarized in: drug control and prevention; drug treatment and rehabilitation; strengthen drug control administration; block the source and prohibition of drugs; fight serious drug-related crime and target new types of drugs. This subdivision of the strategy, coupled with international cooperation, is still at the basis of China's drug police policy, although the term "offensive campaign" has been replaced by "tasks".

The drug control and prevention campaign targeted four groups considered at risk: youth, rural workers, unemployed urban residents, and people in the entertainment and club industry, and involved many activities such as inspections of at-risk places, surveillance technology, promotional activities through social media. The treatment and rehabilitation campaign was carried out through the imposition of administrative punishments for drug use, and it was run out by the MPS and the Ministry of Justice, making clear the central role of the police in the treatment and rehabilitation process. The strengthen of drug control administration was about managing the laws and regulations related to the manufacture and distribution of licit drugs, to avoid the flowing of these substances in the illicit market. The campaign on blocking the source and interdiction of drugs was mainly focused on blocking the source of illicit drugs coming from the Golden Triangle, the Golden Crescent and the northeast region at the North Korea border. China tried to stop the flow of drugs, especially amphetamine-type stimulants (ATS) and heroin from Burma/Myanmar and heroin and opium from Afghanistan and Pakistan, by concentrating control operations at important highway, railway, shipping and postal points. Lastly, the campaign on combating serious crime involved the interagency cooperation in investigating, prosecuting, and punishing serious crimes⁹⁶.

One of the most difficult challenges that the Chinese government had to face in implementing these policies was the lack of funds. Prior to the 1990s, government funding for the war on drugs was scarce, as the drug problem was considered solved until the 1980s and not very serious until the 1990s. They

⁹⁶ Susan TREVASKES (2013), pp. 224-8

were increased in the 2000s, but resources were still inadequate to deal with the situation. Additional funds from local administrations were allocated on the basis of the economic strength of the different areas. Some drug-related criminal cases remained unsolved due to the lack of money, and most drug agencies were not even equipped with basic equipment such as computers, while drug-related organized crime groups could generally rely on equipment advanced. The lack of scientific studies on the drug problem was another big challenge. Many studies on the problem have been conducted by the government and scholars, but there was a lack of scientific studies using rigorous methods, for example to calculate the actual number of drug addicts⁹⁷.

2.3 Changes in drug use and drug addiction treatment

2.3.1 New types of drugs

Since the Reform and Opening Up period, the types of drugs which circulate through China have also changed and increased rapidly. Since 1978, heroin became the primary choice of Chinese drug users, replacing opium, as evidenced by the increasing amount of heroin seized each year. In 1983, for example, the Chinese government seized only 23 grams of heroin. From 1983 to 1985, the total amount of heroin seized was less than 5000 grams, while in 1990 alone, the number reached 1600 kilograms, and the number further increased in the following years. The other drugs most consumed by the Chinese population were cocaine (古柯碱 *gukejian*, 可卡因 *kekayin*), methamphetamine (ice) (甲基苯丙胺 *jiaji benbing'an* (冰毒 *bingdu*)), and marijuana (大麻 *dama*)⁹⁸. In addition, in the first decade of the 21st century, China became a major transit and production country for ATS and chemical precursors. Most of the ATS and heroin produced in Burma / Myanmar, and heroin produced in Afghanistan destined for international markets in Europe and North America, passed through China. This had an important impact on the economic and social development of the country and on the security of the population⁹⁹.

Since the first decade of the 2000s, China is still an importer of heroin, but is primarily an exporter of synthetic drugs and precursors chemical, while opium is produced locally in small quantities in Yunnan, Ningxia, north western areas and Inner Mongolia and is not refined into heroin, but consumed in traditional ways among the rural population.

China has emerged in particular as a producer and exporter of crystalline methamphetamine, ecstasy (or, MDMA, 摇头丸 *yaotouwan*), and has become one of the world's largest producers of precursor chemicals (易制毒化学品 *yizhiduhuaxuepin*) such as pseudoephedrine and ephedrine (麻黄碱

⁹⁷ CHEN Zhonglin, HUANG Kaicheng (2007), pp. 107-8

⁹⁸ LU Hong & LIANG Bin (2008), p. 214

⁹⁹ Susan TREVASKES (2013), p. 221

mahuangjian), which are mainly used for heroin and cocaine production. This new trade is hidden in the legal production and export of precursors. Most parts of the production of precursor chemicals are exported, and they also constitute the most important export of narcotics for China. China's trade of precursors chemical has attracted transnational criminal networks and has led to the rise of a black market of these substances, also consequently leading to a greater involvement of Chinese society in drug-related criminal activities. In the early 2000s, the precursors' market moved from Burma/Myanmar, the traditional market, to Afghanistan, Central Asia and Europe.

The new synthetic drugs were primarily consumed domestically, and especially in the urban parts of China's east coast, even though crystalline methamphetamine and phenyl propylamine produced in China were also exported in the United States, Russia, Central Asia, and other Pacific region countries. Since the early 2000s, the Chinese authorities have tried to stem the emergence of new criminal activities related to the trade in precursors and to reduce the profits of existing ones both through the publication of the Regulations on the Control of Precursor Chemicals (易制毒化学品管理条例 *Yizhidu Huaxuepin Guanli Tiaoli*) of 2005, and through restrictions on the export and production of these substances¹⁰⁰.

2.3.2 Resurgence of drug abuse

The re-emergence of the drug problem in China also includes the dramatic growth in the number of drug addicts in the country.

At the beginning of the 1980s the estimate was of the order of a few thousand (about 5000 drug addicts in 1982) but it grew steadily until the mid-1990s (about 520.000 drug addicts in 1995).

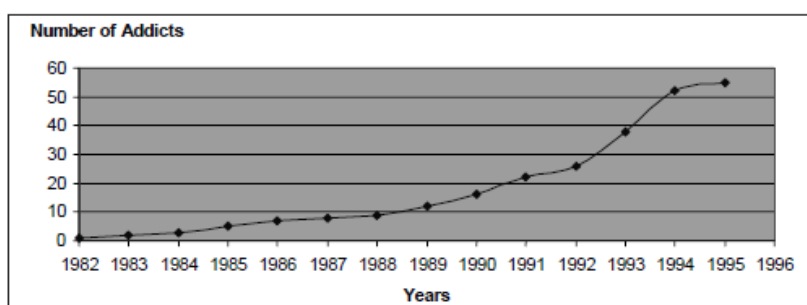


Fig. 3 Estimated number (in 10.000s) of drug addicts in China from 1982 to 1995. Source: Lu Hong, Terance Miethe, Liang Bin (2009), p.142

Since the second half of the 1990s the number has continued to grow gradually to more than 1.5 million in 2010, with a slightly decrease only in 2007 and 2008¹⁰¹.

¹⁰⁰ HE Yin, Niklas SWANSTROM (2006), pp. 29-30

¹⁰¹ ZHANG Sheldon X. & CHIN Ko-lin, *A People's War: China's Struggle to Contain its Illicit Drug Problem*, Brookings Institution Press, Washington, 2015, p.3

When China reopened to the outside world in the early 1980s, the government was initially unable to understand the scale of the threat of the re-emerging problem¹⁰². The fact that heroin had definitively replaced opium as the primary choice of drug users influenced the increase in the number of drug addicts. Furthermore, drug addiction rate growth was not only due to the greater economic availability of the population for the purchase of narcotics, but also to the ideological changes and the new perception of drugs. In fact, the new conditions in the post-reform era have fostered a more tolerant approach towards diversity and deviance. Although the government's anti-narcotic propaganda, the old problems such as drug use, prostitution and gambling were no longer considered “problems” by many people. The patriotic vision that led to the eradication of the drug problem and mass drug campaigns in the 1950s was no longer accepted by many people who instead viewed their drug use as personal entertainment.

By the late 1990s, the profile of the drug user had also changed. The average age of consumers, mainly male, had dropped. According to research, most of them were young males under 35; with poor education; unemployed or self-employed such as entrepreneurs or peasants; mostly smokers, alcohol drinkers, sexually active, and with a criminal record. There was also an important percentage of people belonging to ethnic minorities among those involved in drug-related offenses. Despite the prevalence of male consumers, female consumers have also increased rapidly since the mid-1980s. This phenomenon is due to the fact that women were introduced to the use of drugs by their spouse or partner, or they were initially induced to use drugs and then turned to prostitution and drug dealing to financially support their addiction, also increasing the risk of spreading AIDS/HIV. Especially in the urban environment, for many young women, drug use has been induced by changes in values and lifestyle¹⁰³. In 2000, more than 70 percent of drug addicts were heroin users, and almost 80 percent were under the age of 35¹⁰⁴.

The Chinese government initially tried to contain the spread of drug consumption mainly through the issuing of several laws and regulations aimed at prohibiting drug abuse¹⁰⁵. But legislative efforts have proved insufficient and in the early 1990s, at least 70 percent of counties and cities in China reported drug abuse activities. The worsening of the situation after the mid-1990s, with high annual drug seizures, an increasing number of drug addicts and the growing social threat of drug-related crimes and infectious diseases, has led the Chinese authorities to pay increasing attention to the problem of drug¹⁰⁶. While the national strategy of those years was that of prohibiting simultaneously production,

¹⁰² LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 141-5

¹⁰³ Ibid. pp. 101-5

¹⁰⁴ State Council Information Office of the People's Republic of China 国务院新闻办公室, White Paper on Narcotics Control, June 2000. <http://www.china.org.cn/e-white/1/index.htm>

¹⁰⁵ CHEN Zhonglin, HUANG Kaicheng (2007), pp. 98-109

¹⁰⁶ HE Yin, Niklas SWANSTROM (2006), p.39

trafficking and use of drug, at the second national drugs prevention work meeting in March 1997, it was proposed to move the emphasis to the prohibition of drug use as the priority strategy. However, many continued to consider attacking drug trafficking the core of national drug prevention work, although it was recognized a central role to prohibition of drug use in China's anti-drug strategy. State enforcement agencies were mainly focused on the supply side but attacking the demand side was also on the agenda.

China's strategies aimed at reducing the number of drug addicts and treating drug addicts included coercive drug treatment, registration of drug addicts, drug education and propaganda, and social help and education. On the model of the measures adopted in the 1950s, from the 1980s the registration of drug addicts with local public security bodies and the order to give up drugs within a limited time became important control measures again. The registration work included both voluntary registration and local police investigations into the drug use situation within the community. The work carried out by the local police involved various measures including routine investigations which require a network of links with local residents and village committees. Were considered and registered as "current drug users" those who have get rid of drugs for less than three years, those who have been released from coercive drug rehabilitation and people sentenced for drug addiction to less than three years of re-education through labour (劳教 *laojiao*). The MPS itself admitted that the register was not always accurate, especially in the information reported by the local police to higher level authorities, causing problems of omission, inaccuracy, irregularity and duplication. However, the register clearly shows the continued increase in the number of drug users in the 1990s. The MPS has continued for years to stress the importance of registration and in the 2000 Notice on Strengthening the Work of Registration of Drug Users (公安部关于加强吸毒人员登记工作的通知 *Gong'an Bu Guanyu Jiaqiang Xidu Renyuan Dengji Gongzuo de Tongzhi*) provided the following definition of "drug use" (吸毒 *xidu*): "smoking, eating or injecting opium, heroin, phenolpropylamine type stimulants, morphine, cocaine, marijuana and abuse for non-medicinal purposes of other addictive narcotic or stimulant drugs which are controlled by state regulation"¹⁰⁷.

Since the 1980s, with the introduction of new illicit drugs, especially intravenous drugs, there has also been a significant spread of drug-related diseases such as Hepatitis C and AIDS / HIV. China went through a progressive escalation in the spreading of AIDS/HIV cases. In 1989, in Southwest Yunnan more than a hundred injecting drug users (IDUs) were diagnosed with HIV. The reported AIDS cases amongst IDUs in Yunnan announced the beginning of an epidemic amongst drug users¹⁰⁸.

¹⁰⁷ Sarah BIDDULPH (2007), pp. 177-180

¹⁰⁸The People's Daily, "*The history of AIDS in China*", November 22, 2009, <http://en.people.cn/90002/98666/98965/6820070.html>

Yunnan was the province with the highest prevalence rate of HIV infection due to its serious drug problems¹⁰⁹, however, by the end of the 1990s, HIV infections had been reported in all 31 provinces, autonomous regions and municipalities, with IDUs accounting for from 60 to 70 percent of reported infections¹¹⁰. This was also due to the fact that problems such as drug abuse and prostitution became widespread among the so-called floating population. This mobile group of tens of millions of people has helped to rapidly spread heroin use and consequently related diseases throughout China¹¹¹. Therefore, in the late 1990s, the spread of HIV contributed significantly to a change in perception of the drug problem and China's policy towards people injecting drugs seemed to favour health care rather than punishment. To counter the spread of heroin abuse and AIDS / HIV, China has begun to implement the widest large-scale provision of Methadone Maintenance Therapy (MMT) programs (美沙酮维持疗法 *Meishatong Weichi Liaofa*) and Needle Exchange Programs (针头交换计划 *Zhentou Jiaohuan Jihua*), two harm reduction strategies crucial for HIV transmission prevention¹¹². Since 2003 the Chinese government has launched MMT programs in 58 clinics located in 10 provinces and pilot Needles Exchange Programs, and in 2006 significantly increased funds for the HIV prevention¹¹³.

However, in practice, punishment and stigmatization remained the general approach towards drug addicts, especially IDUs. The need in China for a new, more humane and evidence-based treatment system was made evident by the steady increase in drug use and the consumption of a growing variety of substances, even among the younger population. A new health and human-oriented approach began to appear in the early 2000s, based on the new harmonious society doctrine. China's leaders started considering the strike hard model as a too harsh tool to keep social stability. In those years, Xiao Yang 肖扬, the then president of the SPC, admitted that the strike hard campaigns had been excessively raging on minor offenders who had suffered police violence, prison coexistence with more serious criminals and lengthy administrative detentions, often in inhumane conditions. According to the new ideals, drug users must no longer be only punished, but also be treated as "patients" and "victims of their own addiction". The goal was no longer to correct through severe punishment, but to recover addicted people through medical treatment¹¹⁴.

¹⁰⁹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.108

¹¹⁰ State Council Information Office of the People's Republic of China 国务院新闻办公室, White Paper on Narcotics Control, June 2000. <http://www.china.org.cn/e-white/1/index.htm> ; HE Yin et al. (2006), p. 21; The People's Daily, "The history of AIDS in China", November 22, 2009, <http://en.people.cn/90002/98666/98965/6820070.html>

¹¹¹ HE Yin, Niklas SWANSTROM (2006), pp. 20-22

¹¹² David P. WILSON et al., "The cost-effectiveness of harm reduction", *International Journal of Drug Policy*, 26, 2015, pp. S5-S11

¹¹³ HE Yin, Niklas SWANSTROM (2006), pp. 20-22

¹¹⁴ Patrik TIBKE, *Drug dependence treatment in China: A policy analysis*, London, International Drug Policy Consortium, 2017, p. 2

2.3.3 Drug treatment and rehabilitation

Between 1983 and 2008, the development of coercive models of drug rehabilitation was strongly influenced by the strike hard policy. But the various struggles against drug use have not had a significant impact on levels of use, including the 2005 People's War on Drugs, after which there was a slight decline¹¹⁵.

When the problem of drug addiction re-emerged in the 1980s, drug use and addiction were not considered as criminal offences, but as unlawful behaviours as in the 1950s, and the government approach also harked back to the punitive methods of the 1950s. In fact, in this context detention in Re-education Through Labour (RTL) centres, a form of detention involving forced labour, has emerged as the preferred punishment for drug use. The inmates of the RTL centres were mainly made up of drug addicts, from the late 1980s; the others were political prisoners or people engaged in activities considered morally unacceptable such as sex work or gambling.

At that time, drug treatment and rehabilitation were locally regulated. Local regulations included various penalties ranging from detention under the Security Administrative Punishment Regulation (SAPR) (中华人民共和国治安管理处罚条例 *Zhonghua Renmin Gongheguo Zhi'an Guanli Chufa Tiaoli*), RTL for serious cases and criminal liability if the offense constituted a crime. The amendment of the SAPR in 1986, originally issued in 1957, stipulated the imposition of fines and administrative detention for up to fifteen days on drug users, including those using opium and morphine, in order to give up drugs. In the event of failure, they were to be sent to a coercive rehabilitation centre for a minimum of three months and a maximum of one year. If they continued to use drugs, they were sent to RTL. There were four forms of drug treatment: first, coercive drug treatment in a detention centre managed by the public security organs; second, coercive drug treatment in an RTL camp; third, voluntary drug treatment managed by the health department in clinics under the supervision of public security organs; fourth, at home treatment under the supervision of the public security organs. In this last case, drug addicts had to give up drugs within a limited period and it was thought for people who were not able to be taken into coercive drug treatment centres because they had an acute infectious disease or serious illness, were pregnant or nursing a child under one year old or were too young for admission to coercive drug treatment, or who lived in an area where there was no coercive drug treatment centres. The systems of registration of the drugs users and of social help and education after being released from drug detention were strictly linked to coercive drug treatment. In the 1990s, according to public security organs, China saw the construction of around 700 coercive drug treatment centres and the treatment of around 550,000 drug addicts, with a significant increase in inmates in

¹¹⁵ Sarah BIDDULPH, Chuanyu XIE (2011), p.982

both coercive treatment centres and RTL camps in those years. Drug addicts released from drug coercive treatment centres were cared for through the social help and education (帮教 *bangjiao*) system. To continue drug rehabilitation work after coercive treatment and to limit the occurrence of relapses, the system required close cooperation between the local police, drug rehabilitation centres, street or village committees, the work unit and the family of the individual in question, called health and education group, or social help and education group. Further support was provided by the creation of drug-free communities, which ensured that social help reached all registered drug users. However, there were some gaps in the implementation of the strategy by local communities. The high relapse rates after rehabilitation have led many people to undergo drug coercive treatment more than twice. Under the law, those who restarted using drugs had to be sent to RTL centres, but many became addicted again upon release from RTL resulting in a vicious circle that in the long term achieves the opposite effects to those desired¹¹⁶.

By the end of 2005, the prevailing strike hard policy using severe punitive methods was replaced by a policy of balancing leniency and strictness, which implied a more severe punishment for crimes considered serious and crimes with aggravating circumstances and a more lenient treatment of minor offenses or offenses with mitigating circumstances. Based on this new policy there was an increase in the use of non-custodial punitive methods including community correction. This more humane approach was also reflected in the 2008 Anti-Drug Law. However, the primary purpose of Hu Jintao's policies was to maintain the social order and stability for which drug addicts posed a serious threat, thus guaranteeing them rights and protections were not among the main interests of the state¹¹⁷.

¹¹⁶ Sarah BIDDULPH (2007), pp. 177-185

¹¹⁷ Sarah BIDDULPH, Chuanyu XIE (2011), p.982

CHAPTER 3: LEGISLATIVE FRAMEWORK IN THE FIELD OF NARCOTICS FROM THE LATE 1970s TO THE FIRST DECADE OF THE 2000s

The third chapter aims to outline the legislative context in which the 2008 Anti-Drug Law is inserted. Since the Reform and Opening Up period, the evolution of drug regulation has gone hand in hand with the evolution of the Chinese legal system. In the 1950s, the Chinese government had succeeded in eradicating the drug problem thanks to a mass popular war on drugs, by including the fight against drugs into the economic and political process of state building, and not thanks to a legislative response to the problem. But since the late 1970s, the approach to the drug problem has undergone increasing formalization through legislation.

3.1 Drug control agencies

At the beginning of the period of Reform and Opening Up, the Chinese government, having recovered from a period of substantial absence of the drug problem and not foreseeing its rapid deterioration, did not have a specialized government agency for drug control.

Before 1990, at the national level, the fight against drugs was led and coordinated by departments of the Ministry of Public Security (MPS) (中华人民共和国公安部 *Zhonghua Renmin Gongheguo Gong'an Bu*)¹¹⁸. As the Chinese government became aware of the re-emergence of the drug phenomenon, the need for a single agency to coordinate drug control work, which would unify the work of the different departments involved at the time, became compelling. Therefore, on December 15, 1990, the Notice of the General Office of the State Council on the Establishment of the National Anti-drug Working Group was issued, which declared the establishment of the National Narcotics Control Commission (NNCC, 国家禁毒委员会 *Guojia Jindu Weiyuanhui*). Although the agency's establishment was clearly stipulated, the document had a low legislative level and extremely general specifications¹¹⁹. A real legislative basis for the establishment of the NNCC was given only in the provision of Article 5 (1) of the Anti-Drug Law of 2008 which states: "The State Council has established the National Commission for Narcotic Control to organize, coordinate and lead the nation's drug control work"¹²⁰.

The NNCC is constituted by twenty-five different departments from the central government, including the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Health, General Administration and Customs, etc., and it is the nation's

¹¹⁸ HE Yin, Niklas SWANSTROM (2006), p. 42

¹¹⁹ Li Shiting 李施霆 (2018), p. 117

¹²⁰ Narcotics Control Law of the People's Republic of China (2008). Available in Chinese and in English at: <http://www.lawinfochina.com/display.aspx?id=6604&lib=law>

highest narcotics control organ in charge of leading and coordinating the drug control work in the country and also managing international drug control cooperation¹²¹.

In 1998, the Narcotics Control Bureau (NCB, 禁毒局 *Jinduju*) was established within the MPS, also at the provincial level, as an executive agency of the NNCC, and it replaced the already existing small anti-drug department, which had demonstrated to be unable to supervise and coordinate the entire drug control campaign on its own. Before that, the Chinese police did not have a large police force for drug-related crimes, although a small drug police group had already been established in 1982. It is only since the late 1990s that drug control divisions have been established at different levels of the local public security organs, leading to the formation of a strong group of drug police officers, also thanks to the allocation of a large budget for law enforcement against narcotics by governments at all levels¹²². The creation of the NCB has given the police a central role in the nation's drug control policy. The police-centric approach to all aspects of drug control, including controlling drug use and addiction, has been increasingly criticized by international agencies such as the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO) which condemned the punitive approach as a solution for drug addiction, supporting instead the need to intervene with treatment, education and rehabilitation¹²³.

Since 1998, the NNCC has also started publishing its annual report. Through the "China Drug Situation Report" (中国毒品形势报告 *Zhongguo dupin xingshi baogao*), the Chinese government aims to illustrate the measures taken to combat the drug problem and to show with the help of data the results obtained by maintaining a strict position in drug control, strengthening the legislation, cracking-down on drug-related crimes and implementing drug treatment and rehabilitation measures. These reports have not a solid basis of research methodologies, but they provide valuable information on narcotics control strategies and implementations in China¹²⁴.

In addition to national agencies, by 2000, the governments of all 31 provinces, autonomous regions, municipalities directly under the central government and most counties in China had already established corresponding anti-drug leading agencies¹²⁵.

Furthermore, the Chinese Communist Party also had two agencies responsible for drug policy decision-making. One was the Central Political and Legal Affairs Commission of the Communist Party of China (中共中央政法委员会 *Zhonggong Zhongyang Zhengfaweiyuanhui*) at all levels, and

¹²¹ Susan TREVASKES (2013), p. 223; LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.111

¹²² DAI Mengyan, GAO Huan (2014), pp. 208; HE Yin, Niklas SWANSTROM (2006), p. 42

¹²³ Sarah BIDDULPH, Chuanyu XIE (2011), p.979

¹²⁴ DAI Mengyan, GAO Huan (2014), p. 207

¹²⁵ State Council Information Office, White Paper on Narcotics Control, June 2000, <http://www.china.org.cn/e-white/1/index.htm>

the other was the Central Public Security Comprehensive Management Commission (中央社会管理综合治理委员会 *Zhongyang Shehui Guanli Zonghe Zhili Weiyuanhui*) various regions. The latter served as a deliberative body, and its office was located in the Committee for Political and Legal Affairs of the CCP and co-administered with the Political and Legal Affairs Commission¹²⁶.

3.2 Legislative evolution on drug control

After 1978, to support and protect economic and political reforms, maintain internal stability and attract foreign investment, China also began rebuilding its legal system. Since the late 1970s, China has attempted to rapidly transform itself from a nation with a weak legal system to a nation "ruled by law"¹²⁷. China's legalization process has also been reflected in its drug control laws and regulations. Many improvements have been made to legislative regulation in the field of drug control, including the enactment of the first all-encompassing counter narcotics law in 2008¹²⁸.

At the beginning of the Reform and Opening Up period, the country was still recovering from the negative consequences of the Cultural Revolution and the focus was on the modernization of the Chinese economy. Therefore, resources devoted to drug control were scarce and the Chinese government's efforts to control the emerging problem were essentially limited to formulating new drug control laws and enforcing existing ones. However, due to the almost complete absence of the problem after the 1950s, the relevant legislative and police authorities did not have the necessary skills and knowledge to tackle it¹²⁹.

In light of the new evolving situation of the drug problem, including the spread of new types of drugs in the country, the anti-drug laws and regulations of previous decades have become obsolete and needed to be adapted. One of their main shortcomings was that they were rather vague, general and lacking in specificity, especially in defining the provisions for drug offenses. Another flaw was the lack of regulation of physical detoxification and psychological rehabilitation treatment for drug addicts¹³⁰. Furthermore, until the late 1990s most of the anti-drug laws and regulations were still formulated in the form of notices and other non-normative documents, which had a low legislative level, and limited time and scope¹³¹.

¹²⁶ CHU Chenge 褚宸舸 (2008), p. 24

¹²⁷ On Chinese legal system reform since the Reform and Opening Up period see also: LIANG Bin, *The Changing Chinese Legal System, 1978-Present. Centralization of Power and Rationalization of the Legal System*, New York, Routledge, 2008

¹²⁸ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 100-101

¹²⁹ HE Yin, Niklas SWANSTROM (2006), p.38

¹³⁰ CHEN Zhonglin, HUANG Kaicheng (2007), pp. 102-3

¹³¹ Li Shiting 李施霆 (2018), p. 117

As noted in the previous chapter of this thesis, in the second half of the 1990s, strict law enforcement in drug control work became one of the founding principles of China's drug policy. Since the 1990s, the Chinese government has revised the existing laws many times and several new laws and regulations have been issued. By 2000, the Chinese government had issued more than thirty laws, statutes, and regulations for drug control on national level. On local level, drug control statutes based on the local conditions have also been enacted by some provinces and autonomous regions¹³². However, the rules had different levels of legislation, the scopes of application often overlapped, and the phenomenon of regulations scattered throughout the various departmental laws had become increasingly prominent, hindering the work of controlling narcotics¹³³. Given the complexity of the management of drug control work and the worsening of the situation in those years, the need clearly emerged in China to unify the rules into a single specialized drug control law, as had already been done by most part of the countries of the world.

China's legislative approach to drug control was initially sanction-oriented and focused on the harsh punishment of drug offenses, particularly drug trafficking, while neglecting to address the growing number of drug addicts. After the mid-1990s, the government began to adopt a more comprehensive approach to the problem that also included the regulation of drug addiction and its treatment¹³⁴.

From 1978 to the early 2000s, with strike hard as the policy orientation, an ample anti-drug legislation system with the Criminal Law as the mainstay, and administrative laws and local legislations as the supplement, was gradually established. The legislative core of the legislation was the Criminal Law, while the ideal core was the continuous crackdown on drug crimes.

The drug control legislation's main legal forms included the Criminal Law, administrative laws, administrative regulations, departmental regulations and other normative documents, the High Courts' judicial documents, international anti-drug conventions and treaties, and local governments laws and regulations. In the first decade of the 2000s, with the emergence of new drug situations and the consequent adaptation of national policies to it, the drug control legislative system was further revised and integrated on the basis of criminal law. Adjustments to China's drug policy have brought to light contradictions and conflicts between existing laws and new ideas and practices. The obvious need for a higher-level law to standardize and provide a legal basis for some practices, led to the formulation of the 2008 Anti-Drug Law.

Given the breadth of the legislation and the variety of types of documents it includes, only the most relevant ones will be reported below, with particular attention to criminal laws. The following

¹³² State Council Information Office, White Paper on Narcotics Control, June 2000, <http://www.china.org.cn/e-white/1/index.htm>

¹³³ Li Shiting 李施霆 (2018), p. 117

¹³⁴ HE Yin, Niklas SWANSTROM (2006), p.40

illustration of laws and regulations is intended to provide the essential regulatory framework for understanding the legislative context that serves as the basis for the Anti-Drug Law.

3.2.1 Criminal laws and supplemental regulations

The set mind of the entire legislative system until the late 1990s is the crackdown on drug crimes. As the key word of drug policy, crackdown determines that the entire anti-drug legislation is based on criminal laws and administrative laws¹³⁵. The Criminal Law of the PRC was the only law enacted and passed by the National People's Congress (NPC) that contained criminal penalties for drug offenses¹³⁶. The law was originally passed in 1979 and its first revision, in 1997, has been particularly important for drug control.

3.2.1.1 The 1979 Criminal Law and its three amendments

On 1 July 1979, the first Criminal Law of PRC (中华人民共和国刑法 *Zhonghua Renmin Gongheguo Xingfa*) was promulgated on the Second Session of the Fifth NPC¹³⁷. When the Criminal Law of 1979 was enacted, the number of drug crimes was small, and the drug problem was not prominent. In the absence of the ability to predict the rapid spread of drug crimes and the extent of the social harm associated with them, the penalties provided for by the law were generally not very severe.

The regulation of drug crimes was provided for by Article 171 of the law, contained in Chapter VI (Crimes of obstructing the administration of public order). Only manufacturing, selling, and transporting opium, heroin, morphine and other narcotic drugs were defined as a crime. The sentence for these acts was fixed-term incarceration, or custody, of not more than five years, together with a fine; if these acts were committed continually or involved large quantities of drugs, the term for incarceration, or custody, should not be less than five years. Furthermore, Chapter III (Crimes of undermining the socialist economic order) regulated the smuggling of goods, including drugs. Whoever smuggled drugs was sentenced to fixed-term imprisonment of not more than three years that could be accompanied by confiscation of property (Article 116). Taking drug smuggling as a business, smuggling drugs in huge amount, or being the leader of a drug smuggling group entailed the sentence to fixed-term imprisonment of not less than three years but not more than ten years, and could also entail the confiscation of property (Article 118).

Since the early 1980s, drug control work began to become more difficult due to the increase in drug-related criminal activities triggered by the intensification of drug trafficking, and the growing number

¹³⁵ CHU Chenge 褚宸舸 (2008), p. 23

¹³⁶ LU Hong & LIANG Bin (2008), p. 216

¹³⁷ Criminal Law of PRC (1979). Available at:

<http://www.lawinfochina.com/display.aspx?id=3&lib=law&SearchKeyword=criminal%20law&SearchCKeyword=>

of drug addicts, as also highlighted by the Notice Restating the Strict Prohibition of Opium and Drug Taking issued by the State Council (国务院关于重申严禁鸦片烟毒的通知 *Guowuyuan Guanyu Chongshen Yanjin Yopian Yandu de Tongzhi*) in 1981 and the Urgent Directive on the Problem of Complete Prohibition of Opium (关于禁绝鸦片烟毒问题的紧急指示 *Guanyu Jinjue Yopian Yandu Wenti de Jinji Zhishi*) in 1982. The Notice, in fact, underlined the constant increase in the episodes of cultivation, production, sale and smoking of opium in those years, and it coordinated the drug control work of the public security organs, civil affair departments and health departments. These institutions were responsible for the management of coercive drug rehabilitation for drug addicts.

In addition, the Directive, jointly issued by the CCPCC and the State Council, required drug addicts to register at the local government and give up drug use within a limited time. In 1984, the coercive rehabilitation was also extended to those who were seriously addicted to stimulants drugs¹³⁸.

The NPC and other government agencies in dealing with changing patterns of crime have had to periodically issue decrees and regulations to supplement existing laws. Several government decrees have been enacted to address emerging concerns about drug offenses and their punishment when there was a gap in criminal law¹³⁹.

Under these circumstances, three consecutive supplementary amendments to the 1979 Criminal Law have been made:

1. On March 8, 1982, the Standing Committee of the National People's Congress (NPCSC) issued the Decision on Severely Punishing Those Who Disturb the Economy (关于严惩严重破坏经济的罪犯的决定 *Guanyu Yancheng Yanzhong Pohuai Jingji de Zuifan de Jueding*) which introduced long-term incarceration, up to fifteen years of imprisonment, and increased the maximum sentence to life imprisonment or the death penalty for offenders involved in manufacturing, selling, and transporting narcotic drugs. It also stipulated that state officials engaged in drug trafficking, if the circumstances are serious, had to undergo severe punishments¹⁴⁰. However, the imposition of life imprisonment or the death penalty were only temporary provisions. In fact, at the end of the 1983 Strike Hard campaign, in 1987, the provisions of the original 1979 Criminal Law, i.e. about five years incarcerations along with fines and confiscation of property, continued to be applied¹⁴¹.

¹³⁸ Sarah BIDDULPH (2007), pp. 181-82

¹³⁹ LU Hong & LIANG Bin (2008), p. 217

¹⁴⁰ LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 109-110

¹⁴¹ HE Yin, Niklas SWANSTROM (2006), p.39

2. The Customs Law of the People's Republic of China (中华人民共和国海关法 *Zhonghua Renmin Gongheguo Haiguan Fa*) of January 22, 1987 stipulated crimes committed by the units, providing a legal basis for punishing drug smuggling in the name of the units¹⁴².
3. On January 21, 1988, the Supplementary Provisions on the Punishment of Smuggling Crimes (关于惩治走私罪的补充规定 *Guanyu Chengzhi Zousi Zui de Buchong Guiding*) clarified the sentencing grade for the crime of drug smuggling and increased the maximum legal penalty for drug smuggling to the death penalty¹⁴³.

3.2.1.2 Decision on Drug Control

From both a theoretical and a practical point of view, the Criminal Law had some shortcomings and loopholes in dealing with the drug problem, which cannot fully meet the needs of drug control.

Therefore, in 1990, the Decision on Drug Control (关于禁毒的决定 *Guanyu Jindu de Jueding*)¹⁴⁴ was adopted by the NPCSC. The Decision was mainly based on the Criminal Law, but it also included administrative regulations.

This law marked the entry of Chinese drug control legislation into a more comprehensive regulatory phase and represented a milestone in the narcotics field in China for several reasons: first, it clearly distinguished illicit drugs from other drugs and provides a definition of illicit drugs in line with the definition of the United Nations. They included: opium, heroin, morphine, marijuana, cocaine and other narcotic drugs and psychotropic substances; second, the scope of drug offenses was expanded from manufacturing, selling, and transporting narcotics to providing shelter to drug criminals, smuggling, unlawful possession of drugs, , inducing, forcing, and deceiving others to use drugs; third, a drug offense punishment system was established that coupled the severity of the crime with the severity of the punishment and expanded the use of additional punishments such as the payment of fines and property confiscation. It provided harsher penalties for drug trafficking, including the death penalty for serious offenders: trafficking more than 50 grams of heroin or 1000 grams of opium, carried a sentence of life imprisonment or even the death penalty, making the death penalty applicable to crimes that involved a large amount of drugs or other aggravating factors, e.g. being the ringleader, use of weapons and/or violence in smuggling, and transnational crimes (Article 2); fourth, it stipulates that penalties are not only applicable to individuals but also to institutions, and imposes more severe penalties on government officials who commit drug crimes; fifth, it establishes that China has

¹⁴² CHU Chengge 褚宸舸 (2008), p. 24

¹⁴³ Ibid.

¹⁴⁴ Decision on Drug Control (1990). Available at:

<http://www.lawinfochina.com/display.aspx?id=873&lib=law&SearchKeyword=&SearchCKeyword=%b9%d8%d3%da%bd%fb%b6%be%b5%c4%be%f6%b6%a8>

jurisdiction over all drug offenses, including those committed by foreigners, who, in the absence of extradition agreements, are subject to the Chinese law; sixth, it imposes forced detoxification on drug addicts¹⁴⁵. The Decision was the first national legislative instrument to provide mandatory administrative measures for regulating drug addiction treatment. It stipulated that those who smoked or injected drugs after compulsory abstinence had to undergo re-education-through-labour. Together with the Measures for Compulsory Drug Rehabilitation (强制戒毒办法 *Qiangzhi Jiedu Banfa*), issued in 1995, they were the leading legislations which guided national narcotics control policies with a focus on drug demand reduction¹⁴⁶.

However, the Decision had firstly a symbolic meaning. Indeed, when the Criminal Law of 1979 was enacted, China did not foresee the severity of the drug threat, so the law did not provide for adequate and concrete sanctions for drug-related offenses. The Decision was an important complement to the Criminal Law and marked the beginning of the change in anti-drug legislation in China towards a more concrete commitment to the fight against drugs testified by harsher legal sanctions¹⁴⁷. For a long period of time, the Decision has constituted an important legal resource for handling drug cases in China and has served as the blueprint of the 1997 Criminal Law revision. When the Criminal Law was revised, a considerable degree of inheritance was given to the Decision in the legislation. However, it did not have a high legislative level, and this limited its scope. It also did not touch on many aspects of drug control. Among the others, preventive education and international cooperation¹⁴⁸.

The Decision lost its validity when the Anti-Drug Law was published.

3.2.1.3 The 1997 Criminal Law

In the second half of the 1990s, the government has further increased its crackdown on drug crimes and China's Criminal Law has been further improved in 1997¹⁴⁹. The law has been amended by the Fifth Session of the Eight National People's Congress on March 14, 1997. Chapter VI (Crimes of Obstructing the Administration of Public Order), Section 7 (Crimes of Smuggling, Trafficking in, Transporting and Manufacturing Narcotic Drugs) of the revised Criminal Law contains the eleven articles (347-357) regarding drug crimes. All the articles, except Article 352, are taken from the Decision on Drug Control. The main contents of the part of the Decision regarding crimes are absorbed and the provisions regarding administrative punishments and administrative measures

¹⁴⁵ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.111

¹⁴⁶ DAI Mengyan, GAO Huan (2014), p. 207

¹⁴⁷ HE Yin, Niklas SWANSTROM (2006), p.39-40

¹⁴⁸ Li Shiting 李施霆 (2018), p. 117

¹⁴⁹ Criminal Law of the PRC (1997). Available at: <http://www.asianlii.org/cn/legis/cen/laws/clotproc361/>

continue to be effective. The revision also further intensified the punishment for drug crimes reaffirming the death penalty as the maximum penalty¹⁵⁰. The severe punishment of drug-related crimes is one of the hallmarks of Chinese criminal law in this area and this revision fully embodies this principle. The revision of drug-related crime legislation in the Criminal Law in 1997 reflected the need for further efforts in the fight against drugs and summarized the experience of drug practice in China of those years and the development of criminal law to adapt to social changes related to, and new trends in, the drug problem.

The most important amendments were: first, methamphetamine has been added to the types of drugs. In Article 357, the revision of the Criminal Law gives the same definition of narcotic drugs provided by Article 1 of the Decision but with the addition of “methamphetamine”. It included in the definition the six most common drug types in China:

第三百五十七条 本法所称的毒品，是指鸦片、海洛因、甲基苯丙胺（冰毒）、吗啡、大麻、可卡因以及国家规定管制的其他能够使人形成瘾癖的麻醉药品和精神药品。[...]

Article 357 ‘Narcotic drugs’ in this Law refer to opium, heroin, methamphetamine (ice), morphine, marijuana, cocaine and other narcotic and psychotropic substances that are liable to make people addicted to their use and that are controlled by relevant regulations of the state. [...]

A second important amendment is that it clarified the boundary between crime and non-crime in drug related crimes. Anyone who smuggles, sells, transports, or manufactures drugs, regardless of the quantity, should be investigated for criminal responsibility and given criminal penalties (Article 347); third, it is made clear that in sentencing, only the amount of drugs seized is calculated, not the purity (Article 357); fourth, new crimes have been established and the original ones have been adjusted. The total number of drug-related crimes amounted to twelve. Two new types of crimes have been added: the crime of illegally transporting or carrying materials used in the manufacture of narcotics (Article 350), and the crime of illegally transporting, trafficking, carrying or possessing the seeds and seedlings of opium poppy and other mother plants (Article 352). The 1997 revision of the Criminal Law brought the number of the drug-related crimes in existence to nine, including: smuggling, trafficking, transporting, and manufacturing narcotics (Article 347), unlawfully possessing narcotics (Article 348), providing shelter for drug criminals (Article 349), illegally trafficking materials used in the manufacture of narcotics (Article 350), unlawfully planting opium poppy, marijuana, or other plants (Article 351), inducing, instigating or deceiving others into inhaling or injecting narcotics

¹⁵⁰ CHEN Zhonglin, HUANG Kaicheng (2007), pp. 103-4

(Article 353), harbouring others who inhale or inject narcotics (Article 354), and illegally providing state-controlled addictive narcotics to others (Article 355). The crime of concealing the illegal nature and source of the property obtained from the crime of selling drugs has been adjusted and incorporated into the crime of money laundering (Article 191); fifth, the legal sanctions for various offenses have been adjusted. Criminal law has adopted a system of simultaneous imposition of fines and deprivation of property, with the aim of depriving drug criminals of illegal income and destroying their economic capacity to commit drug offenses again; sixth, it attached importance to the protection of minors. Whoever sells drugs to minors shall be severely punished. Except for the crime of drug trafficking, minors can no longer be considered chargeable of other drug crimes (Articles 347, 353); seventh, the clauses regarding crimes committed by units were refined. The types drug crimes committed by units has been increased, and it is stipulated that the double penalty system shall be adopted for the crimes committed by units (Articles 347, 350, 355); eighth, it limited the scope of state personnel who can be severely punished. Anti-narcotics personnel, or personnel of other state organs, covering or sheltering criminals who smuggle, sell, transport, or manufacture drugs shall be severely punished (Article 349)¹⁵¹.

After 1997, China's criminal law on narcotic drug has basically stabilized. Although the law was amended eleven times between 2001 and 2020, the part relating to drug offenses has not changed, except for a provision on the use of doping by athletes added to Article 355 in the last amendment¹⁵².

3.2.2 Administrative laws

The main administrative law on drug control in the 1980s were the PRC Security Administrative Punishment Regulation (SAPR) (《中华人民共和国治安管理处罚条例》 *Zhonghua Renmin Gongheguo Zhi'an Guanli Chufa Tiaoli*) promulgated on September 5, 1986. It stipulated administrative penalties for drug abuse, planting opium poppy and other mother plants, and illegal transportation, trading, storage, and use of poppy shells. They were then modified on May 12, 1994 and replaced by the PRC Public Security Administration Punishment Law (SAPL) (《中华人民共和国治安管理处罚法》 *Zhonghua Renmin Gongheguo Zhi'an Guanli Chufa Fa*) entered into force on March 1, 2006¹⁵³.

According to this law, people who smoke opium and inject morphine or other drugs damage the public security system. It determined that drug users were subject to up to 15 days of custody, up to

¹⁵¹ On the 1997 Criminal Law see also: LU Hong, Terance D. MIETHE, LIANG Bin (2009), pp. 111-12; CHEN Zhonglin, HUANG Kaicheng (2007), pp. 103-104; LU Hong & LIANG Bin (2008), pp. 216-17

¹⁵² Eleventh Amendment of the Criminal Law of the PRC (2020). Available at: http://www.gov.cn/xinwen/2020-12/27/content_5573660.htm

¹⁵³ CHU Chenge 褚宸舸 (2008), p. 25

200 yuan in fines or warning. It also established that the illegal cultivation of poppy or other narcotic plants was punishable by a maximum of 15 days of custody and / or a fine of up to 3,000 yuan along with plants eradication¹⁵⁴.

The Pharmaceutical Administration Law of the People's Republic of China (中华人民共和国药品管理法 *Zhonghua Renmin Gongheguo Yaopin Guanli Fa*), passed on September 20, 1984 by the NPCSC, also made reference to the administration of narcotics in four articles. For example, Article 39 stipulated that the state implemented special management methods for narcotic drugs and psychotropic drugs. The Law of the People's Republic of China on the Protection of Minors (中华人民共和国未成年人保护法 *Zhonghua Renmin Gongheguo Weicheng Nianren Baohu Fa*), promulgated on September 4, 1991, required parents or other guardians to prevent and stop minors from taking drugs¹⁵⁵.

3.2.3 Administrative regulations

China has exercised a strict administrative control over narcotic drugs and psychotropic substances also through regulations, restricting their production, use, import and export, and preventing them from flowing into illegal channels. On September 13, 1978, November 28, 1987, and December 27, 1988, the State Council promulgated respectively the Regulations on the Administration of Narcotic Drugs (麻醉药品管理条例 *Mazui Yopin Guanli Tiaoli*), the Measures for the Control on Narcotic Drugs (麻醉药品管理办法 *Mazui Yaopin Guanli Banfa*) and the Measures for the Control on Psychotropic Drugs (精神药品管理办法 *Jingshen Yaopin Guanli Banfa*) respectively. These regulations stipulated the control of the production, supply, transportation, use, import and export of narcotic and psychotropic drugs¹⁵⁶.

Following the spread of new types of drugs, the Measures for the Control of Narcotic Drugs and the Measures for the Control of Psychotropic Drugs were substituted by the Administrative Regulations on Narcotic and Psychotropic Drugs (麻醉药品和精神药品管理条例 *Mazui Yaopin he Jingshen Yaopin Guanli Tiaoli*), promulgated by the State Council on November 1, 2005. These regulations were enacted to strengthen the management of narcotics and psychotropic substances and to regulate their legal cultivation, production, use, transport, and other operations which entail the use of these substances under the state control¹⁵⁷.

¹⁵⁴ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.110

¹⁵⁵ CHU Chenge 褚宸舸 (2008), p. 25

¹⁵⁶ Ibid. p. 26

¹⁵⁷ CHEN Zhonglin, HUANG Kaicheng (2007), p. 104

Another important regulation are the Measures for Compulsory Drug Rehabilitation (强制戒毒办法 *Qiangzhi Jiedu Banfa*), promulgated on January 12, 1995 by the State Council and previously cited together with the Decision on Drug Control, on which they are based, for their pivotal role in regulating drug addiction treatment prior to the publication of the Anti-Drug Law.

The Measures regulated in detail the subjects of compulsory drug rehabilitation, the competent authority for compulsory drug rehabilitation, the construction and management of compulsory rehabilitation centres for drug addiction, the terms and methods of compulsory drug rehabilitation and post-rehabilitation education measures¹⁵⁸. In addition, according to these measures compulsory rehabilitation could impose pharmaceutical and psychological treatment, legal education, and moral education on drug addicts. It was established that compulsory rehabilitation was under the supervision of public security organs and the term for treatment was between three and six months, with the possibility of being extended. Treatment at compulsory drug rehabilitation centres and rehabilitation-through-labour centres have emerged as the main drug rehabilitation methods in China¹⁵⁹. After the publication of these measures, the Chinese government began to develop a more comprehensive strategy for dealing with drug control.

In the early 2000s, a series of laws and regulations for the control of precursor chemicals have been issued to avoid the diversion of these substances into the illegal market, to crack down on the related criminal activities and to regulate their import and export. In August 2005 the State Council promulgated the Regulations on the Control of Precursor Chemicals (易制毒化学品管理条例 *Yizhidu Huaxuepin Guanli Tiaoli*) which specified in detail the categories of precursor chemicals, the administrative institutions to control them, the administration of the production, purchase, transportation, import, and export of precursor chemicals, the procedures for supervising and examining them, and the legal responsibilities involved¹⁶⁰.

In January 2006, the State Council revised the Regulations on the Administration of Entertainment Venues (娱乐场所管理条例 *Yule Changsuo Guanli Tiaoli*), first issued in 1999, to give a legal basis to the measures on drug control taken against the entertainment places and their owners. With the introduction of new types of drugs, drug abuse and related activities had widely spread in the entertainment places, also due to a legal void in this field. This revision introduced the clauses regarding the responsibility of the owners for the consumption of narcotics in their venues or their active participation to drug-related crimes¹⁶¹.

¹⁵⁸ Ibid.

¹⁵⁹ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p.118

¹⁶⁰ Ibid. p.112

¹⁶¹ HE Yin, Niklas SWANSTROM (2006), p.41-2

3.2.4 Departmental regulations and other regulatory documents

The regulations and documents enacted by the MPS mainly deal with specific issues concerning investigation and punishment of drug related cases, and drug rehabilitation. Those formulated by the Ministry of Health mainly regulate the production, management, and use of narcotic drugs and psychotropic substances under the state control, as well as the drug treatment system. The Procedures for the Administration of Pharmaceuticals for Drug Addiction Treatment (戒毒药品管理办法 *Jiedu Yaopin Guanli Banfa*) promulgated by the Ministry of Health on June 18, 1995, has provided the pharmaceutical treatment for drug addiction a legal basis and standardized it across the country¹⁶².

The regulations and documents of the economic affairs and foreign trade departments involved strict control of precursor chemicals used in the preparation of synthetics drugs. Since the late 1980s many regulations have been enacted to control the trade, transport and export of precursors, and in particular ephedrine. In October 1988, three types of chemicals such as acetic anhydride, ether, and chloroform that can be used for the manufacture of heroin and other drugs were subject to export control. From 1993 to 1996, China implemented export and import license management on 22 precursor chemicals listed in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. From 1992 to 1998, the relevant government departments issued several regulations on the control of ephedrine, such as the Notice on Further Strengthening the Control of Ephedrine (关于进一步加强麻黄碱管理的通知 *Guanyu Jinyibu Jiaqiang Mahuang jian Guanli de Tongzhi*), issued by the State Council in 1998 stipulating that the production, trading, transportation, use and export of ephedrine shall be subject to special management¹⁶³. From 1998 to 2000, several other similar notices and regulations were issued to strengthen the export and transport management of ephedrine and its varieties¹⁶⁴. The Temporary Management of Export of Precursor Chemicals to Specific Countries/Regions (向特定国家/地区出口易制毒化学品暂行管理规定 *Xiang Teding Guojia/Diqu Chukou Yizhidu Huaxuepin Zanxing Guanli Guiding*), were jointly promulgated in 2005 by the Ministry of Commerce, the MPS and other concerned authorities¹⁶⁵.

In 1997, the State Education Commission of the PRC (i.e. the current Ministry of Education) together with the NNCC issued a notice stating that drug control education should be an integral part of national education and officially includes it in the moral education program in primary and secondary schools. In this regard, a series of regulatory documents have been issued¹⁶⁶.

¹⁶² CHU Cheng 褚宸舸 (2008), p. 26

¹⁶³ Ibid.

¹⁶⁴ State Council Information Office, White Paper on Narcotics Control, June 2000, <http://www.china.org.cn/e-white/1/index.htm>

¹⁶⁵ HE Yin, Niklas SWANSTROM (2006), p.41

¹⁶⁶ CHU Cheng 褚宸舸 (2008), p. 26

3.2.5 Highs Courts judicial documents

The Supreme People's Court and the Supreme People's Procuratorate have issued relevant judicial documents on the application of drug laws and drug-related cases, most of which have been issued by the Supreme People's Court. Several judicial interpretations were issued to clarify and standardize issues regarding crime definition, punishment, and procedures. There are three main types of judicial documents issued by the SPC, of which the third type constitutes the majority¹⁶⁷. The first category concerns the decentralization of the power to pass the death penalty for drug-related crimes. For example, to counter the outbreak of drug trafficking crimes in China's southern border, the SPC authorized the higher courts of Yunnan and Guangdong provinces to provide final review and approval of all death sentences for cases of drug trafficking: in 1991 the Notice by the SPC on authorizing People's High Court in Yunnan Province to approve death sentences in certain drug-related cases (最高人民法院关于授权云南省高级人民法院核准部分毒品犯罪死刑案件的通知 *Zuigao Renmin Fayuan Guanyu Shouquan Yunnan Sheng Gaoji Renmin Fayuan Hezhun Bufen Dupin Fanzui Sixing Anjian de Tongzhi*) was issued, and in 1993 the same notice was issued for Guangdong province (最高人民法院关于授权广东省高级人民法院核准部分毒品犯罪死刑案件的通知 *Zuigao Renmin Fayuan Guanyu Shouquan Guangdong Sheng Gaoji Renmin Fayuan Hezhun Bufen Dupin Fanzui Sixing Anjian de Tongzhi*); the second category concerns various judicial documents issued during strike hard campaigns. The third category is represented by judicial interpretative documents on law enforcement in drug-related cases to standardize drug-related issues. To provide an example, the 1987 Supreme Court's Response on Sentencing Standards for Imposing the Death Penalty on Narcotics Traffickers (最高人民法院关于《贩卖毒品死刑案件的量刑标准》的答复 *Zuigao Renmin Fanyuan Guanyu "Fanmai Dupin Sixing Anjian de Liangxing Biaozhun" de Dafu*) specified that individuals who manufacture, sell, and transport more than 500 grams of heroin were punishable with the death penalty and their property could be confiscated; those who carry more than 300 but less than 500 grams of heroin were punishable with the death penalty and the confiscation of property if the crime involved serious circumstances (e.g., being a ringleader, a repeat offender, or an armed trafficker, etc.)¹⁶⁸. Not only were there many judicial documents on specific conviction issues, but many of them also conflicted with each other. Therefore, on June 6, 2000, the Supreme People's Court issued the Interpretation on Issues Related to the Standards for Conviction and Sentencing in Drug Cases (最高人民法院关于审理毒品案件定罪量刑标准有关问题的解释 *Zuigao Renmin*

¹⁶⁷ Ibid. p. 27

¹⁶⁸ LU Hong & LIANG Bin (2008), p. 217

Fayuan Guanyu Shenli Dupin Anjian Gingzui Liangxing Biaozhun Youguan Wenti de Jieshi) to standardize them¹⁶⁹.

3.2.6 International drug control conventions and treaties

In June 1985, China ratified its accession to the UN Single Convention on Narcotic Drugs of 1961 and to the 1971 UN Convention on Psychotropic Substances, while in September 1989, the country ratified and joined the 1988 UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances. The treaties of 1961, 1971 and 1988 are the three major international drug control treaties and mutually support and complement each other. The task of the first two was to systematize drug control measures to establish a legal basis of international value for the medical and scientific use of narcotic drugs and psychotropic substances and to prevent drugs from being diverted into illicit channels. With the ratification of these international treaties, the Chinese government has pledged to adhere to international laws on narcotics management and the control of drug trafficking, in exchange for the benefits of international cooperation and the support of other nations in the fight against drugs¹⁷⁰.

In the 1990s China also signed several international cooperation agreements with various neighbouring and non-neighbouring states.

In October 1993, China, Myanmar, Thailand, Laos and the United Nations International Drug Control Programme (UNDCP) signed the Mekong Memorandum of Understanding on Drug Control, confirming to strengthen the cooperation to improve drug control measures in the region. In May 1995, the MOU was expanded to include also Vietnam and Cambodia. In that occasion, the first sub-regional anti-drug cooperation Ministerial Meeting was held in Beijing, the "Beijing Declaration" was adopted and the "Sub-regional Action Plan" was signed by the UNDCP and the nations' governments¹⁷¹.

An important cooperation of China in drug control is that with the United States. While historically the relations of cooperation between the two nations have often been characterized by frictions, in the field of cooperation in the control of narcotics, particularly drug trafficking, China and the US have developed a rather peaceful and constructive relationship since 1985. In 1987, the two governments signed the Sino-US Memorandum of Cooperation in Drug Control and in 1997, the presidents of both China and the US signed the Sino-US Joint Statement, which also included anti-drug cooperation and

¹⁶⁹ CHU Chenge 褚宸舸 (2008), p. 27

¹⁷⁰ LU Hong & LIANG Bin (2008), p. 216

¹⁷¹ CHU Chenge 褚宸舸 (2008), p. 27

entailed exchanges of anti-drug officers between the two governments¹⁷². In more recent years, the growing export market from China to the US of synthetic drugs has led the two countries to strengthen the cooperation in this field, in particular, because of the export of fentanyl (芬太尼 *fentanyl*), a synthetic opioid analgesic, one hundred times stronger than morphine and fifty times deadlier than heroin, which reaches American consumers and retailers through the dark web. China's efforts to constantly update the list of fentanyl derivatives to catalogue them as illegal substances are undermined by the rapidity with which the laboratories are able to modify the molecular structure of the substances to create new variables. In struggling its new opioids epidemic China is trying to control the production of these illicit narcotics while working closely with the US in the sharing of information. However, as the major world's fentanyl exporter, China also has a conflict of interest in stopping the flow of these opioids to the US and recent tensions between China and the United States could sabotage their mutual interest in fighting drugs¹⁷³.

China has also carried out cooperation with Russia, Kazakhstan, Kyrgyzstan, and Tajikistan in the field of drug control. In April 1996, China and Russia signed the Cooperation Agreement on the Prohibition of Illicit Trafficking and Abuse of Narcotic Drugs and Psychotropic Substances. In 1998, China, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan signed a joint statement, making the fight against drug crimes and transnational crime an important part of the five-nation cooperation. In addition, the Chinese government has signed bilateral drug control cooperation agreements with Mexico, India, Pakistan, Colombia, and Tajikistan¹⁷⁴.

A UN's political declaration was adopted in 2009 to tackle the global drug problem, and member states, including China, pledged to actively promote a drug-free society. In the international debate of recent years on the legalization of drugs, China stands firmly against legalization, also appealing to this declaration as well as to the three most important international treaties of 1916, 1971 and 1988¹⁷⁵.

3.2.7 Local governments laws and regulations

A conspicuous number of laws and regulations has been issued, especially during the 1990s, by many local governments at provincial level. Moreover, some autonomous areas at prefecture and county level in Yunnan and Sichuan provinces have formulated many regulations in line with the actualities of their regions and ethnicities.

¹⁷² State Council Information Office, White Paper on Narcotics Control, June 2000, <http://www.china.org.cn/e-white/1/index.htm>

¹⁷³ Austin BODETTI, "China-US Cooperation and the New Opium War", in *The Diplomat*, August 16, 2017

¹⁷⁴ CHU Chenge 褚宸舸 (2008), p. 27

¹⁷⁵ China News Service (CNS), "China urges to 'firmly oppose' legalization of narcotic drugs", May 8, 2015, <http://www.ecns.cn/2015/05-08/164641.shtml>

To implement the detailed measures established in the 1990 Decision on Drug Control, for instance in 1991 Yunnan province adopted the Regulations on Drug Control. The ban on narcotic drugs in addition to cultivation, production, use, and transport of narcotics, also covered harbouring of traffickers and abusers. Gansu province followed Yunnan's lead in the same year with similar regulations. To the penalties provided by the 1979 Criminal Law, these provincial regulations and decrees added up to 15 days of prison sentences, fines, or detention at re-education through labour camps for minor offenders¹⁷⁶.

¹⁷⁶ LU Hong, Terance D. MIETHE, LIANG Bin (2009), p. 113; CHEN Zhonglin, HUANG Kaicheng (2007), p. 104

CHAPTER 4: THE ANTI-DRUG LAW

The Narcotics Control Law of the People's Republic of China¹⁷⁷ (中华人民共和国禁毒法 *Zhonghua Renmin Gongheguo Jindu Fa*), or Anti-Drug Law of the PRC (hereinafter also referred to as Law), was issued on December 29, 2007 at the 31st meeting of the Tenth Congress of the NPCSC of China chaired by President Hu Jintao 胡锦涛, and it became effective on June 1, 2008. It replaced the Decision on Drug Control in force since 1990. Since its enactment, the Anti-Drug Law has been effective for more than a decade. The Law is the result of the efforts to synthesize China's broad anti-drug legislation. This is the first national law on the subject which aims to organize and coordinate all aspects of the complex drug control work and aims to provide a legislative basis for the numerous scattered laws in existence and a reference for future ones.

The NNCC defined the Anti-Drug Law “an important milestone in China's drug control history”¹⁷⁸. However, due to the limitations of Chinese legislative resources, legislative techniques and legislation model of the time, the Law has acquired the appearance of an abstract legislation that relies heavily on authorized laws¹⁷⁹.

On April 15, 2004, the CCCPC issued the “NNCC 2004-2008 Anti-drug Work Plan” (国家禁毒委员会 2004 – 2008 年禁毒工作规划 *Guojia Jindu Weiyuanhui 2004-2008 Nian Jindu Gongzuo Jihua*). According to the NPC, the implementation of a drug control law was an important legislative issue and the drug law was a timely work in this context. As a NPCSC legislation, it has a high legislative status, while in terms of content it covers almost all drug-related issues¹⁸⁰.

The Anti-Drug Law is based on three fundamental principles for the management of drug control in China from the late 1990s and early 2000s which can be summarized as: the prioritization of prevention as a control method, the simultaneous ban on four serious drug-related activities, namely the cultivation, production, trafficking and use of drugs, and the adoption of an all-encompassing approach the drug problem.

4.1 Reasons and purposes

The reasons and purposes of the Anti-Drug Law can be articulated on two levels: first, the purposes of the content of the law, from the point of view of the measures adopted for drug control; secondly,

¹⁷⁷ Narcotics Control Law of the People's Republic of China (2008). Available in Chinese and in English at: <http://www.lawinfochina.com/display.aspx?id=6604&lib=law>

¹⁷⁸ Office of China National Narcotics Control Commission, “Significance and Content of the Narcotics Control Law”, June 25, 2008, <http://www.china.org.cn/e-news/news080625-3.htm>

¹⁷⁹ Li Shiting 李施霆 (2018), p. 116

¹⁸⁰ Ibid. p. 117

the reasons that led to the formulation of a framework law on drugs, or the purpose of the adoption of this specific legislative model.

The purposes of the content of the Law are declared in Article 1 of the first chapter (General Provisions):

第一条 为了预防和惩治毒品违法犯罪行为，保护公民身心健康，维护社会秩序，制定本法。

Article 1 This Law is formulated for the purpose of preventing and punishing drug-related illegal and criminal behaviours, protecting the physical and mental health of citizens, and maintaining social order.

Article 1 highlights the intent to prioritize prevention in addressing the drug problem and combine it with punishment in drug control management.

In addition to the self-explanatory protection of the physical and mental health of citizens, the Law also has the purpose of “maintaining social order” (维护社会秩序 *weihu shehui zhixu*).

With the worsening of problems of social disorders in those years, also due the situation of growing economic inequality, the concept of maintaining social order and stability became one of the central objectives for the building of a Harmonious Society, strongly promoted by Hu Jintao at the time when the Anti-Drug Law was issued.

With the publication of the Law, the government intended to make the anti-drug work a fundamental national policy and include it into the plan for economic and social development that could only be achieved through the maintenance of social order. The Law also aimed to fix the leadership system and the work system of the drug control work. Another objective is that of addressing and solving drug problems in a more comprehensive way, by cracking-down on drug-related crimes, promoting anti-drug propaganda and education, banning drug use, and exercising control over precursor chemicals¹⁸¹.

As noted in the previous chapter of this thesis, by the late 1970s the regulatory framework for drug control had been a system composed by scattered laws containing drug control provisions, regulations and regulatory documents, with the Criminal Law as the core of the system. However, a specific drug control law which coordinated and organized work in a uniform way was lacking.

Regarding the purpose of formulating this specific form of law, the government intended to create a framework law on drug control, i.e. an upper-level law that could provide a legal basis for the

¹⁸¹ CHEN Zhonglin, HUANG Kaicheng (2007), p.105

previously published scattered laws and regulations, and a valid legal context in which to insert any future laws and regulations¹⁸².

4.2 Features

To better understand the characteristics of China's drug legislation, a general framework of international anti-drug legislation should be outlined. The international legislation in this field can be roughly divided into three types¹⁸³. The first is a large-scale separate drug control law, stipulating almost all drug control affairs, and with a detailed system. An example of this type of law is the "Controlled Substances Act (CSA)" of 1971 in the United States, which is subordinate to the "Comprehensive Drug Abuse Prevention and Control Act of 1970". It includes the definition of drugs, drug classification control, precursor chemicals control, drug listing procedures, criminal penalties for drug crimes, drug experts' advisory committees and other contents. Due to the detailed regulations and the completeness of the document, it is regarded as the main legal basis the government's war on drugs¹⁸⁴. Italy also adopted in 1990 a consolidated text law on drugs and psychotropic substances ("Testo unico delle leggi in materia di disciplina degli stupefacenti e sostanze psicotrope, prevenzione, cura e riabilitazione dei relative stati di tossicodipendenza", 9/10/1990, n.309)¹⁸⁵.

The second type of drug legislation is the special anti-drug law: in addition to the criminal law, the drug administration law and other related laws, a special law for drug control is formulated, but it does not establish a specific "anti-drug code". The third is still a separate anti-drug law, but on a small scale. It only determines the legal status and scope of drug affairs. In the form of a higher law, it authorizes other laws to separately regulate drug affairs forming a parallel relationship with the criminal law and other laws. This type of drug law gives uniformity to the anti-drug work by abstractly stipulating the related issues, but the specific development of the rules must be realized by other laws. China's Anti-Drug Law is a typical example of this last type of law.

The Law strives to be concise and, consequently, its provisions are mainly general and abstract. The different drug issues are assigned to the relevant legislative or administrative agencies which are authorized to formulate detailed rules. The reason for this phenomenon is that when the Anti-Drug Law was enacted, a wide anti-drug legislation which included the Criminal Law and several anti-drug administrative and departmental laws and regulations had already been promulgated and implemented. If the Anti-Drug Law was detailed and specific, many normative documents which

¹⁸² Li Shiting 李施霆 (2018), p. 117

¹⁸³ Ibid., p. 118

¹⁸⁴ Paul ANACKER, Edward IMWINKELRIED, "Controlled Substance Analogue Enforcement Act Criminal Defense", *Southwestern University Law Review*, 37 (2), 2008, pp.267-302

¹⁸⁵ GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA, Decreto del Presidente della Repubblica, 9 ottobre 1990, n.309. Available at: <https://www.gazzettaufficiale.it/eli/id/1990/10/31/090G0363/sg>

contain specific provisions, such as the 1995 Measures for Compulsory Drug Rehabilitation and the 2005 Administrative Regulations on Narcotic and Psychotropic Drugs, would face changes in the formulation of the main body and the invalidation of the provisions, which would have a great impact on the already existing legislation. Therefore, the conciseness of the Law is due to the desire to avoid as much as possible negative effects on the legislation already implemented. With the approval of the Anti-Drug Law, the existing legislation gained legitimacy from the higher legal status of the Law. Being characterized by generalization and abstraction, the Law aims to achieve a beneficial balance between the completeness of the legislation and the compatibility of existing laws¹⁸⁶.

4.3 Structure and contents

Although it includes all the fundamental aspects of drug control, the Anti-Drug Law is a rather short law. It consists of 71 articles organized into seven chapters including: General Provisions, Anti-Drug Propaganda and Education, Narcotics Control, Measures for Drug Rehabilitation, International Cooperation in Narcotics Control, Legal Responsibility, and Supplementary Provisions.

In the first chapter, on General Provisions, important matters such as drug definition, anti-drug policy, rights and obligations, anti-drug institutions, etc. are clearly stipulated.

After the aforementioned purposes of the Law, in Article 2 provided for the same definition of Narcotic drugs already provided by Article 357 of the 1997 Criminal Law and Article 1 of the 1990 Decision on Drug Control: "Opium, heroin, methamphetamine, morphine, marijuana, cocaine and other under state control, narcotic drugs and psychotropic drugs causing drug addiction." The same article states that for purposes of medical treatment, study and research, the legal production, trade, use, storage, and transportation of narcotic drugs and psychotropic substances are permitted.

The Law calls for the participation of the general public specifying that the work of drug control (禁毒 *jindu*) is under the "joint liability of the whole society" (全社会的共同责任 *quan shehui de gongtong zeren*). State organs, social groups, public institutions, enterprises and other organizations, and the citizens have a duty to participate in drug control in accordance with the provisions of the Anti-Drug Law and the laws and regulations authorized by it (Article 3). Article 4 provides a legal basis for three core principles for drug control management in China since the late 1990s: the "priority of prevention" (预防为主 *yufang wei zhu*) as a control method, a "all-round control" policy (综合治理 *zonghe zhili*), which means adopting an all-encompassing approach the drug problem, and the implementation of the "four prohibitions simultaneously" (of planting, manufacturing, trafficking, use) (禁种、禁制、禁贩、禁吸并举 *jinzhong, jinzhi, jinfan, jinxi bingju*). It is also established

¹⁸⁶ Li Shiting 李施霆 (2018), p. 118

that the anti-drug activity is carried out through a working mechanism composed of the unified leadership of the PRC government, the relevant ministries within their respective responsibilities and with the participation of the general public. Article 5 legitimizes the role of the NNCC as the agency in charge of organizing, coordinating and leading drug control work at the national level. In addition, each government at county level and above may establish anti-drug committees, responsible for the organization, coordination, management of work to combat drugs.

The local governments have to include this work in the National Economic and Social development Plan (国民经济和社会发展规划 *Guomin jingji he shehui fazhan guihua*), and the spending on the fight against drugs must be included in their budgets (Article 6). The state provides incentives such as the provision of tax breaks to subjects who make donations for the anti-drug work (Article 7), and encourages the development of scientific and technical research aimed at combating drugs, the promotion of advanced technologies, the development of equipment for the identification of drugs and methods of rehabilitation and treatment of persons with drug addiction (Article 8). The state also encourages and rewards citizens who report violations of drug laws, and the government and the relevant departments at all levels are obliged to provide protection to the person providing such information (Article 9). In addition, the state encourages the participation of volunteers both in anti-drug propaganda and education work, and in drug treatment and rehabilitation services. Local governments are in charge to provide them with guidance and professional training (Article 10).

The second chapter of the Law is about anti-drug propaganda and education (禁毒宣传教育 *jindu xuanchuan jiaoyu*). In contrast to drug control operations which are under the guidance of the police forces, the anti-drug propaganda work better reflects Chinese characteristics as it is the result of the joint efforts of relevant government departments at various levels and social groups¹⁸⁷.

The state, in various forms at all levels, carries out anti-drug propaganda activities and prevention activities, and disseminates knowledge about drugs, increasing the level of citizens' awareness of the related risks (Article 11). Article 12 states that the state carries out various activities to educate people about narcotics control, to prevent the spread of drug violations and crimes, and to raise public awareness of what the government is doing to combat the problem and the harmfulness of narcotics. The most adopted way to educate and encourage the masses to participate in the fight against drugs are propaganda campaigns, often launched by the government. These campaigns are generally received with broad support from the Chinese people due to the cultural taboo against drug addiction and the feeling of national humiliation passed down from generation to generation since the Opium Wars. An example of a recurring national drug campaign is the one that the Chinese government

¹⁸⁷ DAI Mengyan, GAO Huan (2014), p. 208

launches every year around June 26, on the International Day against Drug Abuse and Illicit Trafficking. Huge events are held across the country and high-level government officials visit drug treatment centres and drug enforcement police units. Furthermore, among the other activities, seized drugs are publicly displayed and destructed, former addicts are presented to the public, public gatherings and public trials of drug traffickers are held. Each year on this occasion, some of the government's anti-drug policy is disclosed and some themes, such as the establishment of drug-free communities and the community-based treatment, are recurring. Around June 26, the Chinese government also releases its annual Report on China's Drug Situation to show the main results accomplished in the previous year in drug control work. The reports, delivered by the Ministry of Public Security in Beijing, are broadcasted by the most important news media outlets in China¹⁸⁸. The state is committed to making drug propaganda reach all citizens, however there are some categories that are more at risk and therefore should be better protected. The government attaches great importance to prevention and education among young people, but sometimes local governments also organize anti-drug campaigns targeting specific geographic areas or social groups such as rural workers, unemployed urban residents and people involved in the entertainment and club industries, including the prostitution industry¹⁸⁹.

Trade unions, the communist youth leagues and women's federations are also authorized to organize propaganda activities in line with their objectives (Article 12). The fight against drugs is included in the education and training programs run by education departments and schools, which are required to promote awareness among students. In this task they must be assisted by the public security organs, and by the administrative departments for justice and health (Article 13). The press, cultural institutions, radio, cinema and television also have a duty to make propaganda against drugs and educate the public. The owners and operators of public places such as airports, train stations, bus stations, hotels, entertainment venues and other public institutions are responsible for education and propaganda in these places and must implement measures to prevent the occurrence in these institutions and places of drug-related crimes. State organs, social groups, enterprises and institutions, and other organizations are obliged to conduct intensive anti-drug training and propaganda among employees. Local support to governments, public security bodies and other relevant ministries should be provided by resident committees and villagers' committees which should strengthen drug fighting training and advocacy by implementing drug prevention and control measures. Parents or guardians of minors should educate them about the dangers of drugs, as well as carry out other activities to prevent drug-related crimes (Articles 14-18).

¹⁸⁸ ZHANG Sheldon X. & CHIN Ko-lin (2015), p.9

¹⁸⁹ Susan TREVASKES (2013), p. 224

The third chapter of the Law defines the areas over which the state exercises its drug control (毒品管制 *dupin guanzhi*). It provides a general regulation for the cultivation of mother plants of narcotic drugs, the production and transport of narcotic drugs, psychotropic substances and chemical precursors. The Law also establishes a control system on entertainment venues, regulates the seizures of drugs and other goods derived from the illicit profits of drug trafficking and money laundering, establishes a system for monitoring and transmitting information. Public security organs at various levels are responsible for controlling narcotics. In addition to them, other departmental authorities are mentioned as responsible for control activities. Article 19 clarifies that the mother plants used for manufacturing narcotic drugs are under state control. Cultivation of opium poppy, coca tree, marijuana and others, is prohibited, as well as smuggling or illegally trading, transporting, carrying or possessing seeds that retain germination, or seedlings of the mother plants of narcotics. Governments of different levels, residents' committees, village committees, upon detection of illegal plants containing narcotic drugs, must immediately take measures to suppress their cultivation and eliminate crops, as well as submit a report on the actions taken to local public security organs. In the manner determined by the state, enterprises are allowed to grow the mother plants of narcotics for medical use. Growing and storage areas of narcotic drugs are included in the list of protected areas. Entering the territory of protected zones for the cultivation and storage of narcotic drugs without the right or permission entails the obligation to immediately leave the zone by order of the employees of the enterprise; if they refuse to obey, they are forcibly expelled under escort (Article 20). The state exercises supervision, licensing and control over narcotic drugs, psychotropic substances and their precursors in the field of experimental research, production, administration, use, storage, and transportation (Article 21). The relevant departments of the State Council supervise the import and export of narcotic drugs, psychotropic substances and their precursors (Article 22). In the event of theft, robbery, loss or discovery of other circumstances that revealed illegal channels for the loss of narcotic drugs, psychotropic substances and their precursors occurring at the enterprise, the necessary control measures are taken, and they are immediately reported to the public security organs and other departments established by law (Article 23). It is prohibited to transfer knowledge about the methods of manufacturing narcotic drugs, psychotropic substances and their precursors (Article 24). The rules for regulating the circulation of narcotic drugs, psychotropic substances and their precursors are approved by the State Council of the PRC (Article 25). If it is necessary to investigate crimes related to drug trafficking, the ministries of civil aviation, railway and transport should assist in carrying out, and public security organs have the right to conduct searches of persons, things, goods and vehicles aimed at finding drugs and their precursors, on the border areas, traffic arteries, ports and airports, railway and bus stations (Article 26). Recreation and entertainment venues must establish control

systems. If they find illegal drug-related activities inside the place of entertainment, they should immediately report it to the police (Article 27). Discovered narcotic drugs, items used for the use of drugs, property and benefits obtained as a result of drug-related crimes, as well as tools, equipment, money used for committing drug-related crimes are subject to seizure in accordance with the law (Article 28). Particular attention is paid to combating the legalization of proceeds from crime, i.e. money laundering (Article 29), including those illegally obtained as a result of a crime of property, and money related to the circulation of narcotic drugs and psychotropic substances. In the PRC, at the state level, a system for monitoring drug trafficking, a system for collecting, analysing, using and exchanging information on the fight against drugs has been organized and is constantly developing (Article 30). In drug control work, law enforcement also relies on a vast network of informants who are mainly arrested traffickers. The information gathered by confidential informant is actually often more useful than inspections and checkpoints on the highways to intercept illicit drug-related operations and constitutes in practice the pillar of the enforcement of drug control policy¹⁹⁰.

Chapter IV, dealing with drug rehabilitation measures (戒毒措施 *jiedu cuoshi*), is the longest and most consistent chapter of the Law. In fact, it contains 22 of the 71 articles, or more than a third, of the entire Law. As the most relevant and the most innovative part of the Anti-Drug Law, this chapter will be analysed in detail in the next chapter of this thesis.

Chapter V briefly outlines the norms of international cooperation in drug control (禁毒国际合作 *jindu guoji hezuo*) in six articles which can be summarized as follows: China declares to abide by the international treaties to which it has acceded, or the principle of reciprocity; the NNCC is the body in charge of managing and conducting international cooperation with the authorization of the State Council; judicial authorities act according to relevant laws for drug-related offenses; the relevant departments of the State Council must engage in sharing information on drug control with other countries, regions and international organizations; authorities in border areas at the county level or above can cooperate with border authorities in other countries or regions; when a drug-related crime case is solved through cooperation with other countries, the gains from the seized assets can be shared; related departments can provide aid to relevant countries for the replacement of mother plants of narcotic drugs with other plants and the development of substitute industries (Article 53-58).

In Chapter VI on Legal Liabilities (法律责任 *falü zeren*), the Anti-Drug Law provides two list of behaviours the commission of which entails being subject to criminal responsibility, if a crime is committed, or, if not, being subject to the public security's punishment. In this chapter, therefore, the

¹⁹⁰ ZHANG Sheldon X. & CHIN Ko-lin (2015)

convergence of the legal responsibilities of the Anti-Drug Law, the Criminal Law and the Public Security Administration Punishment Law emerges.

Stating that in the event that a crime is committed, the offender will be subject to criminal responsibility, the Law indirectly refers to the relevant articles of Section 7, Chapter VI of the 1997 Criminal Law, i.e. the part of the law which refers to drug-related crimes. The Anti-Drug Law is limited to exposing crimes and violations in a generic way, without indicating any specific punishment, while in the Criminal Law the penalties in terms of years of imprisonment are explicitly established and are often combined with fines. Specifically, the penalties provided for by the Criminal Law range from a minimum of three years of imprisonment to a maximum of life imprisonment or the death penalty, based on the quantity in grams of drugs involved, distinguishing between three categories: opium, heroin or methamphetamine, and other drugs. However, while all crimes regulated by the Criminal Law are mentioned in the Anti-Drug Law, numerous crimes mentioned in the Anti-Drug Law are not matched by the Criminal Law, despite the fact that the Anti-Drug Law states for the offender of each crime mentioned that "if a crime is constituted, he shall be subject to corresponding criminal responsibility" (构成犯罪的, 依法追究刑事责任 *goucheng fanzui de, yifa zhuijiu xingshi zeren*). This is the case, for example, with the crime of "providing drugs to others", which will be examined below.

Similar observations can also be referred to the comparison between the Anti-Drug Law and the 2006 Public Security Administration Punishment Law to which the Law indirectly refers for administrative sanctions. Articles 71-74 of the SAPL contain specific provisions on administrative penalties for drug offenses which provide for a maximum of 15 days in prison and a fine of 3,000 yuan¹⁹¹.

Even if Chapter VI were missing, it would not affect penalties for drug-related crimes. The provisions of this chapter have the sole purpose of "gathering" and "connecting" the related legal norms, so as to enrich the content of the Anti-Drug Law and achieve the integrity of the system¹⁹².

The first list of behaviours provided by Chapter VI of the Law includes "direct" drug-related crimes or violations, such as smuggling, trading, transporting, manufacturing, possessing, cultivating mother plants, carrying drugs or seeds, as well as disseminating knowledge about the methods of making narcotic drugs, persuading other people to use drugs, or providing drugs to others (Article 59). The second list includes "indirect" crimes or violations, such as covering up drug criminals' behaviours, informing them of the police's moves, impeding drug inspection, make improper use of the property derived from drug-related violations or crimes detained by judicial or administrative organs (Article

¹⁹¹ Public Security Administration Punishment Law of the PRC (2006). Available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=4549&CGid>

¹⁹² Li Shiting 李施霆 (2018), p. 119

60). Furthermore, the Law establishes the circumstances in which harbouring a drug addict may result in criminal liability or punishment by the public security (Article 61). The use of drugs is considered an administrative, and not a criminal, offense and entails an administrative penalty. A person who uses drugs who voluntarily registered with public security organs, or voluntary undergoes drug addiction treatment, is exempted from any penalty (Article 62). The Anti-Drug Law assigns criminal, or administrative, responsibility to an entity authorized by the state to deal with drugs, psychotropic substances or mother plants (Articles 63), and chemical precursors (Article 64), who is found responsible for letting the substances flow into the illegal market. The legal responsibility of entertainment venues' workers and managers in case of involvement in drug related crimes is established (Article 65). Articles 66, 67 and 68 concern the legal responsibility of individuals, medical institutions and drug treatment centres engaged in the treatment of drug addiction.

If an employee of the public security organs, the administrative department of justice or other related competent services is found guilty of drug-related behaviours, he/she is subject to criminal liability or sanctioned according to law. These behaviours include: concealment, connivance of persons who have committed crimes related to drug trafficking; use of corporal punishment, cruel treatment, insults to persons undergoing rehabilitation from drug addiction; misappropriation, illegal withholding or deduction of funds aimed at the fight against drugs; unauthorized disposal of drugs or property or money related to illegal criminal activities related to drug trafficking (Article 69). Finally, the discrimination of persons undergoing rehabilitation by units or employees of units providing school training, hiring, public safety services, etc., involves the application of a number of measures by the department of education and of labour and, in case of damage to the interested parties, they are compensated according to law (Article 70). The last chapter of the Law established the date of entry into force of the same and decreed the annulment of the 1990 Decision on Drug Control from that date (Article 71).

4.4 Problems and critical points

From the perspective of the legislative technique, the Anti-Drug Law has adopted the model of an abstract legislation which relies on authorized laws. First, legal provisions are established in an abstract way, often without specifying the legal consequences of violating offenses, or specific rights and obligations, and second, drug-related matters are delegated to other departmental laws for completion¹⁹³. Taking Article 13 of the Law as an example:

¹⁹³ Ibid. p. 118

第十三条 教育行政部门、学校应当将禁毒知识纳入教育、教学内容，对学生进行禁毒宣传教育。公安机关、司法行政部门和卫生行政部门应当予以协助。

Article 13 Administrative departments of education and schools shall bring narcotics control knowledge into the scope of contents to be taught, and make narcotics control publicity and education toward students. Public security organs, administrative departments for justice and administrative departments of health shall give assistance.

Although this article stipulates the subject and object of anti-drug propaganda and education work, it does not make any provisions on the content of the narcotics control knowledge, the range of students to address, the means and methods of assistance from relevant departments, and the legal consequences of violating this article.

第十八条 未成年人的父母或者其他监护人应当对未成年人进行毒品危害的教育，防止其吸食、注射毒品或者进行其他毒品违法犯罪活动。

Article 18 Minors' parents or other guardians shall educate the minors about the harmfulness of drugs and prevent them from taking in or injecting drugs or conducting other drug-related illegal or criminal activities.

In this case too, the provision remains on the theoretical level and lacks legal consequences. In the article, if the minor's guardian fails to educate the minor about the harms of drugs and fails to prevent the minor from taking drugs, injecting drugs or engaging in illegal drug activities, it is not clear how he/she should be treated. From the point of view of legal principles, there are unlikely to be legal punishments for parents or guardians, and this provision actually lacks room for enforcement.

However, the meaning of these provisions remains valid. As mentioned above, the Anti-Drug Law was designed to be concise and abstract so that these seemingly inapplicable provisions provide a basis of legitimacy for the formulation of lower-level laws and regulations. Therefore, future laws and regulations can continue to refine the rights and obligations involved in the provisions, without having to deal with the situation of lack of the guidance of a higher law, as has occurred in the past¹⁹⁴. Furthermore, the Law uses a large number of authorized legislations to gather the entire anti-drug legal system, as stipulated, for example, in Article 25.

¹⁹⁴ Ibid.

第二十五条 麻醉药品、精神药品和易制毒化学品管理的具体办法，由国务院规定。

Article 25 The specific measures for the administration of narcotic drugs, psychotropic drugs or precursor chemicals shall be worked out by the State Council.

In addition, the third paragraph of Article 31 states:

[...] 吸毒成瘾的认定办法，由国务院卫生行政部门、药品监督管理部门、公安部门规定。

[...] The measures for determining drug addiction shall be determined by the administrative department of health, the drug supervision and administration department and the department of public security under the State Council.

The above provisions find a correspondence in the Administrative Regulations on Narcotic and Psychotropic Drugs (2005) and the Measures for the Determination of Drug Addiction (2016). Extending the scope of the Anti-Drug Law in the form of authorized laws can be useful from the point of view of the legislative technique to connect scattered drug laws and regulations, but at the same time it will also cause conflicts between the legislative levels of the laws and the content of some provisions¹⁹⁵.

As already mentioned, one example is the inconsistencies between the Anti-Drug Law and the Criminal Law. Many violations abstractly defined in the first one, lack concrete regulation in the second. Article 59 of the Anti-Drug Law states that:

第五十九条 有下列行为之一，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，依法给予治安管理处罚： [...]

Article 59 Where anyone commits any of the following behaviours, if a crime is constituted, he shall be subject to corresponding criminal responsibility; if not, he shall be subject to a punishment for public security: [...]

This sentence establishes a connection between Chapter VI on the Legal Liabilities of the Anti-Drug Law, the Public Security Administration Punishment Law, and the Criminal Law.

However, the three laws still have barriers to connection, which result in a partial disconnection between the clauses and a vacuum in the sanctioning provisions, causing the Law to fail to fully carry out its legal effects. The Anti-Drug Law divides the penalties for many drug-related acts into two levels: "constitute a crime" (构成犯罪 *goucheng fanzui*), subject to criminal liability, and "not yet

¹⁹⁵ Ibid. p. 119

constitute a crime" (尚不构成犯罪 *shang bu goucheng fanzui*), subject to public security management sanctions. However, this dichotomy is not compatible with the Chinese criminal constitution system. In fact, the system is made up of four elements: the subject, which is the person who commit the crime; the subjective idea or the state of mind to commit the crime; the object, which is the type of crime; and the objective consequence or the result of the act which endangers society. The subjective idea and the objective consequence must be linked by a causal relation. The four elements are the necessary and sufficient conditions to constitute a crime. Only when the requirements of the four elements are fully met, a certain behaviour can be considered a crime. The elements of a crime are defined according to the principle of the unity of subjective and objective conditions. This is the overriding principle that defines the offense and determines criminal responsibility. According to it, without an element and in lack of consistency between subjective and objective conditions, the offense cannot be established, and it cannot be called a crime, i.e. "does not constitute a crime" (不构成犯罪的 *bugoucheng fanzui de*).

The Public Security Administration Punishment Law punishes behaviours that are determined to be socially harmful (具有社会危害性 *juyou shehui fanhaixing*) but not enough for criminal punishment (不够刑事处罚的 *bugou xingshi chufa de*). It is not legally binding for behaviours that are not socially harmful and does not constitute a crime. The Anti-Drug Law requires public security management penalties for all acts that "do not constitute a crime", which goes beyond the scope that the Public Security Administration Punishment Law only applies to "not enough for criminal punishment".

Taking the crimes of "smuggling, trafficking, transporting, and manufacturing drugs" (point 1, Article 59 of the Anti-Drug Law and Article 347 of the Criminal Law) as an example, the Criminal Law stipulates that criminal responsibility should be investigated and given criminal punishment regardless of the quantity of drug. There are only two situations in the Anti-Drug Law that meet "not constituting a crime": one is insufficient evidences, and the other is the inconsistency between the subject and his responsibility. Although the standards of evidence for public security penalties and criminal penalties are different, they both require that they must be sufficient. Therefore, the lack of evidence cannot be subject to public security penalties. The criminal responsibility age for drug trafficking crimes is only fourteen years old, which is consistent with the minimum responsibility age for public security penalties. What is not enough for criminal punishment is not enough for public

security punishment. In fact, the Public Security Administration Punishment Law also does not provide penalties for the above-mentioned situations¹⁹⁶.

To give an example of inconsistency between the laws, the act of "providing drugs to other" (point 7, Article 59 of the Anti-Drug Law) do not have any corresponding criminal penalty in the Criminal Law. Instead, Article 72 of the Public Security Administration Punishment Law stipulates the public security penalties for this act¹⁹⁷.

第七十二条 有下列行为之一的，处十日以上十五日以下拘留，可以并处二千元以下罚款；情节较轻的，处五日以下拘留或者五百元以下罚款：

[...]

二) 向他人提供毒品的；

Article 72 Anyone who commits any of the following acts shall be detained for not less than 10 days but not more than 15 days, and may be concurrently fined not more than 2, 000 yuan. If the circumstances are relatively lenient, he (/she) shall be detained for not more than 5 days or shall be fined not more than 500 yuan:

[...]

(2) Providing any drug to any other person;

Article 355 of the Criminal Law is the closest to it, however, in this article the subject can only be people who are engaged in the production, transportation, management, and use of state-controlled narcotic drugs and psychotropic drugs in accordance with the law, and the target of the crime can only be people who take or inject drugs. These restrictions are not compatible with the open and unconditional "providing drugs to others" in the Anti-Drug Law. The crime of "providing drugs to others" could also be traced back to the crime of drug "trafficking" regulated by Article 347 of the Criminal Law. However, "providing" does not necessarily imply the desire for profit, which is implicit in the act of "trafficking", as defined by the Contemporary Chinese Dictionary.

Resolving these inconsistencies and establishing a connection between similar crimes is not only useful for law enforcement purposes, but through a public propaganda of clearer laws and guidelines for the determination of convictions, the public would also be educated and warned to a greater extent,

¹⁹⁶ WANG Yanling 王雁凌, "Jindufa de falu zeren yu qita falu zeren de xianjie" 《禁毒法》的法律责任与其他法律责任的衔接 (Convergence of Legal Responsibility of Anti-drug Law and Other Legal Responsibilities), *Journal of Wenzhou Vocational & Technical College*, Vol.11, No.4, 2011, p. 77

¹⁹⁷ Li Shiting 李施霆 (2018), p. 119

and the illegal and criminal acts of introducing and selling drugs could be better combated and reduced¹⁹⁸.

In general, the Anti-Drug Law does not provide specific provisions, save for rare exceptions such as Article 61 which completely stipulates the administrative punishment in case of harbouring people who use drugs, or in case of intermediation in buying and selling narcotics.

第六十一条 容留他人吸食、注射毒品或者介绍买卖毒品，构成犯罪的，依法追究刑事责任；尚不构成犯罪的，由公安机关处十日以上十五日以下拘留，可以并处三千元以下罚款；情节较轻的，处五日以下拘留或者五百元以下罚款

Article 61 Where anyone houses other people to take in or inject drugs or plays an intermediate role in the buying and selling of drugs, if a crime is constituted, he shall be subject to corresponding criminal responsibility; if not, the public security organ shall keep him in custody for no more than 15 days but no less than 10 days, and may impose a fine of not more than 3,000 yuan upon him; if the circumstances are minor, the public security organ shall keep him in custody for no more than 5 days or impose a fine of not more than 500 yuan.

The reason is that the drug-related administrative violations stipulated in the Public Security Administration Punishment Law promulgated and implemented in 2006, before the issuing of the Anti-Drug Law, did not include "housing other people to take in or inject drugs or playing an intermediate role in the buying and selling of drugs". Therefore, the Anti-Drug Law had to formulate a specific provision to make up for the omission of the SAPL. The law was revised in 2012, but no changes regarding this provision have been made.

The legislative technique of the Anti-Drugs Law has caused several cases of overlap and conflicts in content between the Law and other laws and regulations authorized by it. In addition, other problems related to the legislative hierarchy of the laws have also arisen. For example, the regulations on drug crimes in the Legal Liabilities chapter of the Law are specified by the Criminal Law, but the legislative level of the Anti-Drug Law is lower than that of the Criminal Law. This "authorized legislation", in substance, could be defined "upside down". Furthermore, article 25 of the Anti-Drug Law which establishes that specific measures for the control of narcotic and psychotropic substances and chemical precursors must be formulated by the Council of State refers to the Administrative Regulations on Narcotic and Psychotropic Drugs of 2005. However, the Regulations were formulated earlier than the Anti-Drug Law. Therefore, in the regulations, the Anti-Drug Law was not invoked as

¹⁹⁸ WANG Yanling 王雁凌 (2011), p.74

the upper law¹⁹⁹. The Regulations were revised in 2013, but the Law was not explicitly mentioned, and it was not listed as a higher law in the legislative hierarchy. In fact, Article 1 of this regulations states: “With a view to strengthening control on narcotic drugs and psychotropic drugs, ensuring the lawful, safe and reasonable use of narcotic drugs and psychotropic drugs, and preventing them from flowing into illegal channels, the present Regulation is formulated in accordance with the provisions of the Pharmaceutical Administration Law and other relevant laws.”²⁰⁰

4.5 Need for a revision

While continuing to take into account the stability of the drug control regulatory system, the Anti-Drug Law should also have a forward-looking perspective. Therefore, it is necessary that the Law adapts to the ever-changing situation through its own review and improvement. This concept is also the true meaning of the existence and effectiveness of the Anti-Drug Law.

When the Law was enacted, China was at a turning point in social transformation and new changes were taking place in the drug problem. Features of the new millennium, such as innovation in social management and the complex drug situation, have presented new challenges to drug control. Therefore, although the anti-drug work has embodied new concepts, and the new policies such as the priority to prevention, the practice of all-round control and the four prohibitions simultaneously have been legalized in the Anti-Drug Law, however, in the implementation process, the strike hard strategy orientation is still at the centre of current anti-drug work and the orientation towards demand reduction and harm reduction has not been specifically implemented.

The Anti-Drug Law is obsolete in some of its parts. For example, as regard to the definition of drugs, Article 2 of the Law almost completely retains the definition of the 1990 Decision on Drug Control and the 1997 Criminal Law. The Law, as a higher-level law, did not respond in a timely manner to the rise in types of drugs, the changes in the drug abuse situation, the ever-increasing emergence of chemical precursors, and other changes which would require a review and an improvement in order to adapt to the changing situation.

Furthermore, some of the rules formulated by the Anti-Drug Law were modified due to changes in the country during the enforcement process. For example, during the implementation of the Law, China officially abolished the system of re-education-through-labour. This change had an impact on the legal status of the mandatory isolation and detoxification measures and on the legitimacy of the system. The Laws should also be revised as a result of changes in policies and practices.

¹⁹⁹ Li Shiting 李施霆 (2018), p. 119

²⁰⁰ Regulation on the Control of Narcotic Drugs and Psychotropic Drugs (2005). Available at: <http://www.lawinfochina.com/display.aspx?id=4497&lib=law&SearchKeyword=psychotropic&SearchCKeyword=>

In addition, the establishment of a leniency and strictness criminal policy, amendments to criminal law and other legislative and political changes have had a significant impact on drug-related offences convictions and the evidence system. In light of these legislative changes, it would be desirable to make adequate changes also to the Anti-Drug Law to adapt to the pace of evolution of the national legal system²⁰¹.

However, a revision of the Law should not lead to a distortion of the Law itself. It should indeed continue to adhere to the abstract legislation model supported by authorized laws. Drug legislation in China has a broad scope and many legislative levels. Thanks to the Anti-Drug Law, many drug laws and regulations have been brought together into one system of legal resources. The adoption of another type of drug law, for example on the model of a separate large-scale drug law, would not be reasonable as it would upset the entire regulatory system and would inevitably lead to more overlapping or conflicting laws and regulations. The Anti-Drug Law should still be established as an abstract law, with authorized laws or blank provisions to accommodate other drug laws that have previously been in place and effectively implemented. The current model is in line with the purposes of the Law and with the characteristics of the Chinese antidrug legislation, therefore, the Chinese Anti-Drug Law does not require substantial changes in its style. However, the structure of the Law is not balanced, and the length of the chapters varies. For example, Chapter IV on drug treatment measures is too detailed, contrary to the style of the other chapters. The chapter was written with the idea of temporarily compensating for the lack of regulation of rehabilitation measures, but after the enactment of the Drug Detoxification Regulation in 2011, it is no longer necessary. The contents of the chapter and those of the Regulation overlap and are repetitive, however the documents coexist, and it is necessary to refer to both in the application of the law. In a possible revision this chapter of the Anti-Drug Law could be reduced and made generic and abstract according to the style of the other chapters, delegating to the Regulation the more detailed discipline of rehabilitation measures²⁰².

²⁰¹ Li Shiting 李施霆 (2018), p. 120

²⁰² Ibid. p. 121

CHAPTER 5: DRUG TREATMENT AND REHABILITATION IN CONTEMPORARY CHINA

The fifth chapter analyses the theme of drug addiction treatment and rehabilitation in China starting from Chapter IV of the Anti-Drug Law entitled “Measures for Drug Rehabilitation” (戒毒措施 *jiedu cuoshi*). The chapter aims to present the treatment and rehabilitation methods described by the 2008 Anti-Drug Law and the 2011 Drug Detoxification Regulation which acts as a complement to the Law. The Anti-Drug Law has brought about some important news and changes in the drug addiction treatment system in China. The implications of the abolition of RTLs and the criticism raised by Chinese methods regarding the violation of human rights will be highlighted.

Finally, an example of the implementation of the new rules and new ideas on rehabilitation will be reported through the analysis of the case study on the “Sunshine Project” in Guizhou.

Chapter IV of the Anti-Drug Law, dedicated to drug rehabilitation measures, is the largest and most specific chapter of the Law. With 22 articles out of 71, it constitutes about one third of the entire Law. Also, unlike the vague and generic style of the other chapters, the style of this chapter is presented in more detail. However, although the chapter does not only provide vague guidelines as it does for the other chapters, the provisions were still not very detailed, considering the absence of other specific laws governing the treatment of addiction at the time of the publication of the Law.

Even though the Law demonstrates a change of approach and shows China's awareness of the disease nature of drug addiction whose treatment cannot be entrusted to justice, but requires specific physiological and psychological care, the lack of detail in the regulation constituted one major obstacles to implementation²⁰³.

To fill the gaps in the chapter of the Law, the Drug Detoxification Regulation (戒毒条例 *Jiedu Tiaoli*) was published in 2011²⁰⁴. It extends and completes the provisions of the Law, even if the two laws overlap in several points.

5.1 Drug addiction definition and assessment

In the first article of chapter IV, the Anti-Drug Law declares that the state undertakes to carry out various measures to help addicts to give up drug addiction, to educate them and save them. Therefore, rehabilitation treatment is provided to people suffering from drug addiction.

²⁰³ LIU Yu, LIANG Juncheng, ZHAO Chengzheng, ZHOU Wenhua, “Looking for a solution for drug addiction in China: Exploring the challenges and opportunities in the way of China’s new Drug Control Law”, *International Journal of Drug Policy*, 21, 2010, pp. 149-154

²⁰⁴ Drug Detoxification Regulation (2011). Available at : <http://www.lawinfochina.com/display.aspx?id=8941&lib=law&EncodingName=big5#>

The Anti-Drug Law doesn't provide any health-based criteria to assess drug dependence. The methods to define drug addiction (吸毒成瘾 *xidu chengyin*, or 毒瘾 *duyin*) are determined by the Health Administration Department, the Drug Supervision and Administration Department and the Public Security Department of the State Council (Article 31).

In current Chinese drug policy, drug addiction is considered a treatable chronic mental disorder. The Law does not directly provide a definition of drug addiction, but merely delegates it to the three departments mentioned above.

The definition is provided by Article 2 of the Measures for the Determination on Drug Addiction²⁰⁵ (吸毒成瘾认定办法 *Xidu Chengyin Rending Banfa*) issued on 1 April 2011 (amended in 2016²⁰⁶), adopted by the Ministry of Public Security with the approval of the Ministry of Health.

第二条 本办法所称吸毒成瘾，是指吸毒人员因反复使用毒品而导致的慢性复发性脑病，表现为不顾不良后果、强迫性寻求及使用毒品的行为，常伴有不同程度的个人健康及社会功能损害。

Article 2 The term “drug addiction” as mentioned in these Measures refers to chronic recurrent encephalopathy caused by repeated drug use by drug users, which manifests itself as behaviors of compulsive seeking and drug use regardless of adverse consequences, generally accompanied by varying degrees of personal health and social function damage.

Under the 2011 Measures, the assessment of addiction is entrusted to the public security organ which can establish the presence of drug addiction in the presence of a positive drug test, if there is evidence of drug use by the individual examined and whether the individual exhibits withdrawal symptoms, or in the presence of evidence of a history of drug use, including being on the drug users register and having participated in a voluntary treatment program (Article 7). In the event of technical difficulties in identifying the addiction, the public security organ can appoint a specialized medical institution (Article 4).

As a mental disorder, addiction would always require a clinical diagnosis by trained medical personnel, but the Anti-Drug Law and the Drug Detoxification Regulation don't involve medical professionals, or other authorities such as the judiciary, in the processes of determining drug addiction and imposing treatment. The involvement of medical personnel in the addiction diagnosis process

²⁰⁵ The Central People's Government of People's Republic of China, *Measures for the Determination of Drug Addiction [in Chinese]*, January 30, 2011 http://www.gov.cn/gzdt/2011-02/01/content_1797148.htm

²⁰⁶ The Central People's Government of People's Republic of China, *Decision on Revising “Measures for the Determination of Drug Dependence” [in Chinese]*, December 29, 2016 http://www.gov.cn/gongbao/content/2017/content_5213189.htm

would require the availability of many medical professionals and a substantial financial support from the Ministry of Public Security²⁰⁷.

The target of the Anti-Drug Law, as can be seen from Article 31, are drug addicts (吸毒成瘾人员 *xidu chengyin ren yuan*), or people who have been diagnosed with drug addiction.

Treatment and rehabilitation are therefore specifically reserved for drug addicts and not for general drug users. The term "drug user" (吸毒人员 *xidu ren yuan*) can be found in Article 32, referring to the fact that the public security organs must enter drug users in the government registration system. Fines and short administrative detention periods under the SAPL may be imposed on drug users who are assessed as non-dependent²⁰⁸.

Drug users registered in China are not necessarily drug addicts, but they are people who have tested positive for an illicit substance following a urine test. The same Article 32 states that public security organs are authorized to test people suspected of being drug addicts. Although the urine test only detects the presence of recent drug use and cannot establish the presence of an ongoing addiction, however, urine testing remains a widely used method for determining addiction in China²⁰⁹. This means in practice that the police are allowed to make clinical diagnoses purely on the basis of the individual's appearance, his criminal record, and his drug use history. These measures are inconsistent with internationally accepted standards of assessing drug dependence, such as the Addiction Severity Index (ASI) approved by the WHO, which call for a wide range of biological, behavioural and psychological components be taken into account. Furthermore, the WHO recommends that only qualified medical professionals, should be permitted to conduct drug dependence clinical diagnoses²¹⁰.

Article 32 highlights the fundamental role of public security organs not only in drug control operations and in the drug addicts registration process that fall within the scope of maintaining public security, but also in areas that do not normally pertain to police forces such as the identification and assessment of drug addicts.

5.2 The registration system

Registration plays a central role in the identification and supervision of drug users. A person who is recognized as a drug user by the police, the departments of justice or the department of health, is placed on the national register, the National Drug Prohibition Information System. Registration is

²⁰⁷ LIU Yu et al. (2010)

²⁰⁸ Sarah BIDDULPH, Chuanyu XIE (2011), p. 990

²⁰⁹ LIU Yu et al. (2010)

²¹⁰ Patrik Tibke, *Drug dependence treatment in China: A policy analysis*, London, International Drug Policy Consortium, 2017, p.5

managed centrally by the MPS Narcotics Control Bureau and locally by the police. The number of registered drug users is quite high, but estimates indicate that there are many more actual drugs users in China. The register is intended to keep up-to-date information on drug users and monitor them through police supervision and periodic urine, blood or hair tests. It is not possible for a person to contest his inclusion in the register, nor to be removed from the register. Drug addicts will remain registered regardless of whether their rehabilitation has ended successfully, their status won't change, and they can be subjected to random and periodic drug testing²¹¹.

All those who take part in compulsory or voluntary treatment are registered on the Chinese government surveillance system as drug users. The system is connected to the citizens' identity card and the police is notified every time drug users use their card, for example if they register in a hotel, if they use public transport, or voluntarily access a care service of drug addiction. This allows the police to rapidly reach them and subject them to a drug test. Furthermore, as long as they remain registered on the system, drug users are not allowed to obtain, or use, a driving license, so even those already in possession are withdrawn²¹². This system, violates the privacy of drug users, greatly affects their lives by hindering reintegration into society for a long time even after the end of treatment and rehabilitation, and it also constitutes a barrier to voluntary treatment.

5.3 Methods of treatment based on the Anti-Drug Law and the Drug Detoxification Regulation

In Chapter IV of the Anti-Drug Law, four types of treatment and rehabilitation are outlined: community-based treatment (社区戒毒 *shequ jiedu*), voluntary treatment (自愿戒毒 *ziyuan jiedu*), compulsory isolated treatment (强制隔离戒毒 *qiangzhi geli jiedu*), community-based rehabilitation (社区康复 *shequ kangfu*).

Except for the voluntary treatment, the other methods can be compulsorily imposed.

The number of articles for each type of treatment is not balanced. Three articles are devoted to the regulation of community-based treatment, two to community-based rehabilitation and two to voluntary treatment. However, as many as ten contain instructions for compulsory isolated treatment. Actually, the Law does not present a scientific subdivision of the four treatment methods. The measures for the treatment and rehabilitation of drug addiction are presented, without however being clearly classified. The explicit subdivision into four measures was stipulated by the Drug Detoxification Regulation in 2011²¹³. In fact, Article 2 of the Regulation clarifies:

²¹¹ Sarah BIDDULPH, Chuanyu XIE (2011) p. 984

²¹² YANG Jie, GIUMARRA Melita J. (2020)

²¹³ REN Yong'an, LU Xianyang, *A New Study on the Judicial Administrative System with Chinese Characteristics*, Singapore, Springer, 2020

第二條 [...] 戒毒工作坚持以人为本、科学戒毒、综合矫治、关怀救助的原则，采取自愿戒毒、社区戒毒、强制隔离戒毒、社区康复等多种措施，建立戒毒治疗、康复指导、救助服务兼备的工作体系。

[...] In the drug rehabilitation work, the principles of “people first, scientific drug rehabilitation, comprehensive treatment, care and assistance” shall be followed, various measures such as voluntary drug rehabilitation, community-based drug rehabilitation, isolated compulsory drug rehabilitation and community-based recovery shall be adopted, and a working system covering drug rehabilitation treatment, recovery guidance and assistance service shall be established.

5.3.1 Voluntary treatment

According to the Anti-Drug Law, a drug addict can voluntarily decide to undergo treatment and rehabilitation either by requesting community-based treatment or compulsory isolated treatment from the public security organ, or by going to a medical institution qualified for rehabilitation from drug addiction (Article 36).

Voluntary treatment (自愿戒毒 *ziyuan jiedu*) is independent of other methods. The other three methods constitute three phases of a mandatory alternative path to voluntary treatment that can be stopped even after the first phase, in the event that the individual gets rid of the addiction, or can be extended up to nine years. However, patients who choose to voluntarily undergo drug addiction treatment are also registered on the government database²¹⁴.

Voluntary treatment is mainly based on medical treatment provided by the public health system. Licensed health professionals work there, including doctors, nurses, psychologists and psychiatrists. Prior to the Anti-Drug Law, voluntary treatment in China was offered by private clinics, but unofficially and in an unregulated form. The Law, for the first time, officially integrates voluntary treatment into national drug control policy²¹⁵.

After the publication of the Law, medical institutions authorized to provide voluntary treatment are both private specialized drug detoxification hospitals, general hospitals generally affiliated with a psychiatric or drug treatment department, and medication maintenance clinics such as clinics for methadone treatment. In 2015, there were 66 medical institutes authorized for detoxification treatment in China and they could accommodate about 3000 drug users²¹⁶.

In order to provide drug addiction treatment service, the medical institution must comply with the conditions established by the administrative department of health under the State Council, must obtain

²¹⁴ Sarah BIDDULPH, Chuanyu XIE (2011) p. 984

²¹⁵ Patrik TIBKE (2017), p. 4

²¹⁶ YANG Jie, GIUMARRA Melita J. (2020)

the approval of the administrative department of health under the government of the province, the autonomous region or the municipality, or inform the public security organs of the same level. The services provided must meet the standards developed by the administrative department of health under the State Council and be subject to control and supervision by the same department. The Law prohibits medical institutions from conducting rehabilitation activities for profit. It therefore prohibits advertising medicines and equipment used in treatment and requires that treatment costs comply with standard prices set by the health departments at the provincial, autonomous region or municipality level (Article 36).

However, voluntary treatment is not accessible to many addicts precisely because of the high prices. Most of these are private institutions that do not receive funding from governments or donors. A treatment period ranging from 10 to 15 days can amount to more than double the average monthly wage²¹⁷.

There is a zero-tolerance policy for the use of narcotic substances during treatment and, in case of violation, the medical institution is obliged to promptly inform the public security bodies (Article 37). The public security organs are authorized to arrange for any transfer to a mandatory treatment centre. This zero-tolerance approach not only contrasts with treatment models that are more medical treatment-oriented, focused on harm reduction and aimed at the elimination of drug addiction²¹⁸, but also conflicts with the idea of a more humane approach to treatment supported by government rhetoric. However, in reality, this policy is rarely adhered to by voluntary rehabilitation institutions and, rightly taking into account the chronic relapsing nature of addiction, patients who have been expelled for drug use are allowed to re-enroll²¹⁹.

In addition, sometimes when police forces have to reach the quota of arrested drug users necessary to meet performance indicators, addicts who are receiving voluntary treatment undergo mandatory urine tests and can be transferred to mandatory isolated treatment without due process²²⁰.

The Law does not emphasize and does not expressly favour voluntary treatment with respect to other forms of treatment, on the contrary the space dedicated to it is considerably less than that dedicated to compulsory treatment. However, under Article 62 of the Anti-Drug Law and Article 9 of the Drug Detoxification Regulation, if a drug user voluntarily goes to a licensed medical institution for addiction rehabilitation, he is exempted from punishment by the public security organ for drug use. Therefore, those who undergo voluntary treatment do so mainly to avoid incurring the administrative penalty, rather than for a real desire to receive drug detoxification treatment²²¹.

²¹⁷ Ibid.

²¹⁸ Sarah BIDDULPH, Chuanyu XIE (2011) p. 984

²¹⁹ Patrik TIBKE (2017), p. 5

²²⁰ YANG Jie, GIUMARRA Melita J. (2020)

²²¹ Ibid.

Regarding voluntary treatment, the Anti-Drug Law is mainly concerned with regulating the behaviour of medical institutions that intend to provide this type of service. A broader description of the type of treatment offered is provided by the 2011 Drug Detoxification Regulation.

Article 10 of the Regulation states that voluntary treatment must be based on a written agreement between the addict, or his guardian, and the medical institution. This means that the treatment implies the patient's full informed consent and the presence of qualified medical personnel. The agreement must specify the modalities and duration of the treatment, ensure that patient information remains confidential, explain the rules and regulations of the treatment. One of these rules, already present in the Anti-Drug Law, is that which prohibits and severely punishes the use of drugs concomitant with the treatment. Articles 7 and 12 also state that, except for cases in which the patient receives methadone maintenance therapy or relapses into the use of drugs during treatment, the treatment agreement will remain confidential. In the two cases listed above, however, the medical institution will have to report the patient's personal data and history of drug use to the public security bodies for the insertion of the latter in the government database of drug users. Article 11 of the Regulation establishes instead that voluntary rehabilitation treatment must include, in addition to detoxification treatment, psychological assistance, behavioural therapy, information for the prevention of AIDS/HIV and other infectious diseases. It must also employ scientific diagnoses, technologies and medicines in line with the provisions of the state. However, in addition to these instructions, the Regulation does not provide other features of voluntary treatment and minimum quality standards that institutions should adhere to²²².

In addition to treatment in licensed voluntary treatment centres, voluntary medication maintenance programs, provided by both medical clinics and community-based treatment centres, have also helped reduce drug use in China. These are harm reduction programs, mainly aimed at reducing the spread of HIV among people who use intravenous opioid drugs. The most popular of these treatments in China since 2004 is the Methadone Maintenance Treatment (MMT). The program has significantly contributed to reducing the spread of HIV among drug users by reducing the use of illicit opioid drugs and providing clean facilities for the exchange of syringes. However, there is a high dropout rate in China, partly due to the fact that drug therapy is not implemented with psychological and social support interventions²²³. The fact that official MMT clinics adopt restrictive policies on the administration of methadone also contributes to the high dropout rate²²⁴.

²²² Patrik TIBKE (2017), p. 5

²²³ YANG Jie, GIUMARRA Melita J. (2020)

²²⁴ LIU Yu et al. (2010)

5.3.2 Community-based treatment

Since the 2000s, China has begun to realize that isolation can only temporarily solve the problem of physical addiction, but it does not help addicts to reintegrate into society, does not act on environmental factors that can influence addiction, and does not mobilize the family and the community to assist the drug addict in reintegration²²⁵.

The government, therefore, with the Anti-Drugs Law has introduced a new form of non-custodial treatment in Chinese law for the first time: community-based treatment (社区戒毒 *shequ jiedu*).

Community-based drug addiction treatment is commonly understood as a well-structured type of treatment, which takes place in an isolated from society and family-like environment where addicts interact with each other and where peer education is emphasized. Community-based treatment in China deviates from this definition. The community is intended as a living space for local residents of a restricted area, such as an urban sub-district, or rural village or township. The authority in charge of the area has a wide range of responsibilities including community safety, health care and residents' employment. The communities referred to in the Law are therefore environments open to all residents, including drug addicts under treatment. In fact, the treatment of drug addicts has been placed among the responsibilities of the local government, in most cases, without experience in the sector. The Law attributes an important role to community-based treatment, but the legal status and responsibilities of communities are not clear²²⁶. This has created confusion around the nature of this treatment method and how it should be implemented among those who should be familiar with the Law such as drug users and local NGO workers, but also local governments, and it gave rise to various local interpretations²²⁷.

Community-based treatment was designed to help drug addicts quit addiction by relying on social resources and community forces²²⁸. The Law shows that community-based treatment aims to provide a series of services to help the social reintegration of drug addicts within communities. These services include anti-drug education, assistance in vocational training and job search, medical assistance, social and psychological support. The two forms of community treatment provided by the Law, community-based treatment (社区戒毒 *shequ jiedu*) and community-based rehabilitation (社区康复 *shequ kangfu*), are very similar in practice. Community-based treatment is imposed as an initial

²²⁵ Sarah BIDDULPH, Chuanyu XIE (2011) p. 981

²²⁶ LIU Yu et al. (2010)

²²⁷ Joe AMON, "Where Darkness Knows No Limits": *Incarceration, Ill-Treatment, and Forced Labor as Drug Rehabilitation in China*, New York, Human Rights Watch, 2010, p.18

²²⁸ Li Enshen, "Community Drug Treatment in China: Promising Program or an Unfinished Project", *Lawasia Journal*, 2012, p. 31

treatment measure, while community rehabilitation is ordered upon release from a compulsory isolated treatment centre²²⁹.

At the local level, community-based treatment programs have been implemented in various ways. In some communities the treatment is organized and managed by the local police with the help of non-professional volunteers, in others professional social workers have been hired. But the programs require financial funding, especially if specialized staff are hired, and not all locations can afford it²³⁰.

Article 3 of the Anti-Drug Law calls for the participation of the whole society in the fight against drugs. The treatment of drug addiction is therefore characterized as a shared burden of the whole community, not just the prerogative of the police or medical professionals.

More specifically, Article 17 of the Drug Detoxification Regulation stipulates that with regard to community-based treatment, the work must be carried out through the joint efforts of a working group made up of full-time community-based treatment workers, the local police, community medical staff, families of drug addicts and volunteers.

The purpose of community-based treatment is to use a wide range of existing social resources with the aim of rehabilitating drug addicts, without resorting to the use of prison and, in theory, protecting them from stigmatization and social isolation. However, being mandatory and based on a system of threats and coercion, community-based treatment is more like tools commonly used to fight crime and defend the population from potentially dangerous individuals²³¹. Community treatment is more similar to compulsory rehabilitation and in practice this translates into a perception of the drug addict more similar to that of a social danger to be curbed, than to that of an individual victim of a disease, to be helped and reintegrated into society.

Under Article 33 of the Anti-Drug Law and Article 13 of the Drug Detoxification Regulation, the public security organ can require a drug addict to undergo the treatment in the community, and must inform the sub-district office of the city (城市街道办事处 *chengshi jiedao banshichu*) or the people's government of the village or town (乡镇人民政府 *xiangzhen renmin zhengfu*) of the individual's place of residence, or of the place where the individual is currently residing. This means that, the public security organs have the permit to test a suspected drug addict and, if he tests positive for an illicit substance, they can assess his addiction and may impose the community-based treatment on him.

The Law establishes that the treatment must last three years. It can be imposed by the public security organ already after the first detection of drug use, however it is still a more lenient measure than that

²²⁹ YANG Jie, GIUMARRA Melita J. (2020)

²³⁰ Sarah BIDDULPH, Chuanyu XIE (2011) p. 985

²³¹ Patrik TIBKE (2017), p. 6

provided for by the 1990 Decision on Drug Control, which provided for immediate sending to a compulsory rehabilitation centre, or detoxification centre²³². It is not possible to end the treatment early due to good behaviour or prolonged abstinence. At the end of the three years the local police have the task of deciding whether the addict has fully recovered, and therefore whether further treatment is necessary or not. Again, the decision is made without consulting competent health professionals. If the individual is considered recovered, community treatment is interrupted; otherwise, the individual will be sentenced to up to three years of detention in a compulsory isolated treatment centre²³³.

The Law does not provide for any criteria to be followed to determine whether the addict has successfully or failed community treatment. It is up to the public security organ to decide whether the individual is ready to return to normal life or whether he should be sent to a compulsory rehabilitation centre.

The fact that an individual must be subjected to community-based treatment in the place where his permanent residence or current residence is registered denies the possibility of receiving community non-custodial treatment to the large number of migrant workers who do not live in their place of permanent residence and do not have a local *hukou*²³⁴. Undergoing community-based treatment would mean for them to be sent back to their original places of residence in rural areas, where limited social and economic resources are reserved for drug treatment programs²³⁵.

Article 34 of the Anti-Drug Law states that the city sub-district office, or the village or town people's government, of the addict's place of residence is responsible for community rehabilitation work, but does not state that they should personally provide the treatment. They can in fact act as intermediaries and delegate work to other relevant grassroots local organizations who will have to enter into an agreement with patients to implement specific treatment measures based on their personal physical and psychological conditions and family circumstances. The work is carried out under the guidance and assistance of the public security bodies and the administrative departments of justice, health and civil affairs. However, the Law does not clarify what makes grassroots organizations "relevant" and what standards should be followed for treatment services²³⁶. The same Article also stipulates that the sub-district offices or people's governments, and administrative labour departments under people's governments at the county level, must provide the necessary vocational training, guidance and employment assistance to unemployed and non-skilled drug addicts who lack the professional capacities required to obtain an employment. Article 18 of the Drug Detoxification Regulation

²³² LIU Yu et al. (2010)

²³³ Patrik TIBKE (2017), p. 6

²³⁴ Sarah BIDDULPH, Chuanyu XIE (2011) p. 985

²³⁵ Enshen LI (2012), p. 52

²³⁶ Patrik TIBKE (2017), p. 6

completes the provision by establishing that local governments and community working groups must provide among other measures to help drug addicts out of addiction: a guide to drug rehabilitation knowledge; teachings and warnings; vocational training, career guidance, assistance for school, work and medical care; and other measures to help drug addicts in their detoxification process.

Despite the emphasis placed by the Law on vocational training and assistance in finding a job, the theory collides with several practical difficulties.

The difficulties encountered are primarily of economic nature. In some provinces, as we will see in the case study, local authorities enter into agreements and provide incentives to businesses to encourage the hiring of former drug addicts. Most of the local realities where community treatment programs are conducted, however, do not have sufficient economic funds to start similar collaborative projects of partnership between public and private entities²³⁷.

Another difficulty that can also be traced back to economic reasons is the lack of specialized personnel among the social workers who are entrusted with the supervision and assistance of drug addicts. Indeed, they face situations that would require specific and adequate professional training, however they are often volunteers, or come from backgrounds such as police departments or prison staff and adopt a punitive and counterproductive approach.

Furthermore, assistance in work or study is often hindered by the uncooperative attitude of employers and schools. Discriminatory attitudes have been also found towards social workers because of their contacts with drug addicts. Without government support, social workers have little chance of actually helping drug users reintegrate into society.

In the context of the market economy, employers are no longer willing to hire drug addicts in rehabilitation who do not have the necessary skills and experience and who can compromise the profit of the business²³⁸.

Discrimination is still a widespread problem and many employers are unwilling to hire individuals with a more or less recent history of drug addiction²³⁹. But the discriminatory behaviour towards drug addicts in China is not a problem that concerns only the search for work. The attitude of discrimination and rejection on the part of community residents is clearly one of the main reasons for the difficulty in implementing community-based treatment. Drug addicts in China are treated with hostility and discrimination even by family and friends, and even after rehabilitation. Drug use is generally perceived by the population as a behaviour that violates social and moral values, and drug addicts as representatives of moral degradation, physical laziness and mental emptiness. Stigma is also associated with the fear of HIV/AIDS contagiousness. This attitude of the general public makes

²³⁷ Ibid.

²³⁸ Enshen Li (2012), pp. 42-44

²³⁹ Joe AMON (2010), pp.34-36

collaboration between social workers and drug addicts even more difficult, since the latter, accepting the assistance services, are afraid of exposing themselves as drug users and being marginalized by society²⁴⁰.

In most cases, in the absence of well-funded programs, community treatment consists mainly in being regularly subjected to mandatory urine tests and restrictions on freedom of movement by the police. Article 35 explains that the drug addict must voluntarily fulfil the community rehabilitation agreement and, in the event of a slight violation of the agreement, authorized personnel must criticize and educate him. In the event of a serious violation of the agreement, or in the event that concomitant use of drugs is discovered, the staff must report it to the public security organ.

The public security organ may decide whether to send the individual to a compulsory treatment centre. The Law does not specify which cases of violations are considered "serious". Some of these cases of serious violation are explained in the Drug Detoxification Regulation. According to Article 19, drug addicts have to undergo regular testing. Public security organs can impose both prescheduled and random urine tests²⁴¹. Article 20 of the Regulation states that evading or refusing the test more than three times constitutes a serious violation of the rehabilitation agreement.

Drug addicts who are receiving community treatment must remain in the administrative area in which they reside for the entire duration of the treatment. Leaving the area for more than three days is allowed only in the presence of a written permission from the public security organ (Article 19). Article 20 further explains that if an individual travels outside his community three times without authorization, or travels outside his community for cumulatively more than thirty days without permission, he is seriously violating the community-based treatment agreement.

Article 4 of the Regulation establishes that the public security organs above county level are responsible for the registration and dynamic management of drug addicts. The dynamic management (动态控制 *dongtai kongzhi*) is the specific residential surveillance system for drug addicts during community-based treatment. However, the restrictions imposed are almost identical to those applied to criminal suspects in the pre-trial stages of bail (取保候审 *qubao houshen*) and residential surveillance (监视居住 *jianzhi juzhu*). These semi-coercive measures are usually imposed by the police on minor criminal suspects. As with drug addicts in community treatment, a restriction on freedom of movement and regular monitoring of activities are also imposed on minor offenders on bail or residential surveillance. In addition to undergoing regular urine tests, drug addicts must also

²⁴⁰ Enshen LI (2012), pp. 44-46

²⁴¹ Patrik TIBKE (2017), p. 7

regularly produce written reports that contain the description of their daily activities and the feedback on the therapy they are receiving²⁴².

Violation of residential surveillance during the bail period by suspected criminals results in arrest as the violation could pose a threat to public order and community safety. The provision to send the addict who moves away from the area of residence to a compulsory rehabilitation centre, which is in fact a form of detention, implies that the addict likewise represents an imminent threat to society and therefore his freedom to movement must be limited²⁴³. Despite the use of different terms, in practice the procedures are very similar, and this is in contradiction with the basic idea of the Anti-Drug Law which considers drug addicts not criminals, but victims and patients. The limited freedom of movement during community-based treatment reflects the coercive nature of this treatment method. Community treatment ideally has the merit of trying to help addicts' recovery without isolating them from society, allowing them to preserve their social bonds, but the restrictions they are subjected to hinder achieving this in practice²⁴⁴.

This and other difficulties in implementing the method and the poor levels of medical assistance and professional training have made it difficult to achieve the purposes of the treatment in the first years after the enactment of the Anti-Drug Law.

5.3.3 Compulsory Isolated Treatment

Before the passage of the Anti-Drug Law, drug addiction treatment was predominantly controlled by the criminal justice system. The two main methods of "treatment" were detention in compulsory detoxification centres run by the police for up to six months, and detention in "re-education through labour" (RTL) camps run by the Department of Justice for one to three years²⁴⁵. Those who were first arrested were generally sent to compulsory detoxification centres, while repeat offenders had to undergo longer treatment in RTL camps. The facilities were isolated from the outside and all of their programs included a paramilitary routine, manual labour and exercise, and education programs.

In compulsory detoxification centres, addicts were kept in solitary confinement for the first seven to ten days to "cleanse their system". In centres where funds were sufficient, inmates were kept under the supervision of medical staff, but in less economically developed areas the so-called "dry detoxification" method was often applied, which consists of forced abstinence without medical assistance to relieve symptoms. After detoxification, the inmates underwent a period of rehabilitation which consisted of work programs, education and discussion groups mainly geared to self-criticism.

²⁴² Enshen LI (2012), p. 37

²⁴³ Patrik TIBKE (2017), p. 7

²⁴⁴ Enshen LI (2012), p. 36

²⁴⁵ Sarah BIDDULPH, Chuanyu XIE (2011) pp. 986-987

In most of these centres, counselling, behavioural therapy and psychotherapy were absent or underdeveloped. In addition, there was a lack of measures to assess the severity of the addiction. Rehabilitation by carrying out productive activities was the most common method and was intended both to distract the inmates from the addiction and to financially support the facility. The drug addicts arrested again by the police after being released from the detoxification centres were sent to the RTL camps. In these camps, located far from the cities, the rehabilitation activities were similar to those of the detoxification centres, although information about them is scarce²⁴⁶.

With the passage of the Anti-Drug Law, the two previous forms of detention were replaced by the compulsory isolated treatment (CIT) (强制隔离戒毒 *qiangzhi geli jiedu*), a new form of administrative detention imposed by the police without a court decision.

The Anti-Drug Law defines only the minimum duration of one year and maximum of three years of compulsory isolated treatment, but Article 27 of the Drug Detoxification Regulation also adds that the treatment includes a period of between three and six months in a centre of the public security organ, and the remaining period in a centre of the administrative department of justice. This model recalls the previous one which included a period in a detoxification centre, possibly followed by a period in an RTL centre.

The compulsory treatment method for drug addiction has been widely criticized throughout the world and numerous studies show its ineffectiveness especially in relation to the relapse rate of drug addicts at the end of treatment²⁴⁷. It should be noted that China is not the only country that adopts strict measures for the compulsory treatment of drug addicts. In fact, many Asian countries, including Cambodia, Indonesia, Laos, Malaysia, Myanmar, Thailand and Vietnam, use forms of administrative detention for compulsory treatment. In Russia, the use of drugs is a criminal offense, punishable by imprisonment. In European countries, imprisonment for personal drug use is not widespread, but in some jurisdictions the border with drug trafficking is blurred²⁴⁸.

Compulsory isolated treatment can also have some advantages from the point of view of maintaining social order as it helps reduce the number of drug-related crimes and the spread of AIDS. As regards the effectiveness of the treatment on addiction, the advantage offered by this treatment modality is isolation in a drug-free environment. However, neither forced abstinence nor the treatment measures

²⁴⁶ ZHANG Sheldon X. & CHIN Ko-lin (2015)

²⁴⁷ About the ineffectiveness of compulsory drug treatment see for example: D. WERB et al., "The effectiveness of compulsory drug treatment: A systematic review", *International Journal of Drug Policy*, 28, 2016, pp. 1-9; Martin P. WEGMAN et al., "Relapse to opioid use in opioid-dependent individuals released from compulsory drug detention centres compared with those from voluntary methadone treatment centres in Malaysia: a two-arm, prospective observational study", *The Lancet Global Health*, Vol. 5, Issue 2, E198-E207, 2017; T. C. WILD, A. B. ROBERTS, E. L. COOPER., "Compulsory Substance Abuse Treatment: An Overview of Recent Findings and Issues", *European Addiction Research*, Vol. 8, No. 2, 2002, pp. 84-93; Patrik TIBKE (2017)

²⁴⁸ Sarah BIDDULPH, Chuanyu XIE (2011) p. 981

used in the centres are empirically supported²⁴⁹. It is interesting to note that in the Anti-Drug Law, while for compulsory treatment methods work appears to play an important role as a means of rehabilitation, it is not mentioned in connection with voluntary treatment.

In 2012, twelve organizations affiliated with the UN asked China through a Joint Statement to close compulsory rehabilitation centres, but Chinese scholars have defended this treatment model, arguing that the method is used as a strategy of harm reduction for addiction problems that do not pertain only to the medical field, but which constitute above all a threat to public safety²⁵⁰.

The relapse rate after detention in these centres in China is very high, ranging from 70 to 97%²⁵¹. Despite the data proving the method's ineffectiveness, this model is still widespread, and the arrest and transfer of drug users to compulsory isolated treatment centres is an important indicator of performance for the police. This constitutes a cause for conflict between drug users and the Chinese police²⁵².

Article 25 of the Drug Detoxification Regulation and Article 38 of the Anti-Drug Law regulate the access of a drug user to CIT. Article 25 of the Regulation refers to Article 38 of the Law and contains the same provisions. Before being sent to the CIT an individual is generally assigned to community-based treatment and the public security organ is authorized to send him to the CIT if the community treatment period ends unsuccessfully, or if the individual has already been sent previously to a CIT centre. Article 38 of the Anti-drug Law establishes four conditions that can result in the transfer of a drug user who is receiving community treatment to compulsory isolated treatment: refusing to receive community-based treatment; using drugs during the community-based treatment period; seriously violate the community-based treatment agreement; relapse into drug use after community-based treatment or after mandatory isolated treatment. The Article also states that, in the presence of a form of addiction that is serious and difficult to resolve through community-based treatment, the public security body may decide to send the individual directly to mandatory isolated treatment.

The police are authorized to assess whether an individual has a "severe addiction" to drugs (吸毒成瘾严重 *xidu chengyin yanzhong*) even without consulting medical personnel and can therefore decide to assign him the mandatory isolated treatment based on their assessment²⁵³. The 2011 Measures for the Determination of Drug Addiction establish that the identification of drug addiction is entrusted to the public security organ, or to a medical institution appointed by it. Based on Article 8 of these Measures, the public security organ can define an individual as suffering from "severe addiction" in

²⁴⁹ YANG Jie, GIUMARRA Melita J. (2020)

²⁵⁰ Ibid.

²⁵¹ Ibid.; Patrik TIBKE (2017)

²⁵² YANG Jie, GIUMARRA Melita J. (2020)

²⁵³ Patrik TIBKE (2017)

the presence of at least one of the following conditions: 1. If he has previously undergone community-based treatment, or mandatory treatment, or drug detoxification maintenance treatment; 2. If there is evidence that he has used drugs by injection, or has used at least three times more than two types of drugs cumulatively; 3. If there is evidence that drug use occurs in conjunction with acts of fornication, self-harm, violent violation of personal safety or the property of others, or that endangers public safety. The determination of drug addiction is not based on clinical evaluation, but on the standards of law enforcement. In many cases, the diagnosis by the police is not clinically correct and even people who do not have a severe form of addiction are subjected to compulsory isolated treatment²⁵⁴.

According to Article 38 of the Anti-Drug Law, a drug addict can also decide to voluntarily undergo the mandatory isolated treatment, after having obtained the consent of the public security organ.

The only categories of people who cannot be subjected to CIT are pregnant women and women nursing babies under one year of age, and children under 16. Persons belonging to these categories must alternatively receive community-based treatment (Article 39).

Under Article 40, if an individual violates the community treatment agreement, the police are tasked with determining whether the violation is serious enough to deserve the transfer to compulsory isolated treatment. If the police deem CIT is necessary, the decision must be notified in writing to the individual in question, and reported to the individual's family and to the local police station of the individual's place of residence, within 24 hours of notification. The individual who receives the notification has, according to the Article, in theory the possibility of rejecting the sending order to the CIT and can apply for administrative reconsideration or bring an administration action before the court. However, the appeal is addressed to a judge of the administrative court and once again the involvement of a medical institution capable of adequately assessing the individual's condition is not required. Furthermore, despite the theoretical possibility of an appeal, the person must find a way to launch the appeal from the police cell or from the CIT centre. Indeed, the appeal process does not allow for the postponement of compulsory treatment²⁵⁵.

The deadline for compulsory isolated treatment is two years, but it can be shortened by one year, or extended by one year, depending on the patient's response to treatment. After the first year, inmates undergo an evaluation of their rehabilitation process. If the individual is recovered from addiction, a reduction in the term of detention can be requested. Conversely, if after two years the individual has not successfully completed rehabilitation, the detention can be extended for another year, up to a total period of three years (Article 47). Although the Office of the NNCC explains that the extension of

²⁵⁴ YANG Jie, GIUMARRA Melita J. (2020)

²⁵⁵ Patrik TIBKE (2017)

the addiction treatment period is in line with the time required for treatment²⁵⁶, if it is excluded that the compulsory isolated treatment may have a punitive purpose, such a long period of detention can only be justified by the fact to carry out psychological therapy, since physical therapy requires a much shorter period, in the order of days or, at most, weeks²⁵⁷. Compared to minor drug-related offenses such as minor theft or illegal possession of drugs that can be punished with a prison sentence of less than eight months in due process, drug use in China, with up to three years in prison, carries stricter restrictions on personal freedom. This not only constitutes a violation of human rights, but also prevents drug users from having access to genuine evidence-based addiction treatment²⁵⁸.

However, the Anti-Drug Law does not provide a guideline for evaluation standards for rehabilitation of detained drug addicts. Various measures for assessing the progress of drug addicts are taken locally at the provincial or city level. The assessment of an individual's progress during rehabilitation requires specific professional training, therefore it is unlikely that law enforcement officials will be able to provide an objective assessment without the supervision of qualified medical personnel²⁵⁹.

Article 42 states that upon arrival at the compulsory isolated rehabilitation centre, patients must undergo an examination of their physical condition and control of personal items. When drug addicts arrive at the centre, they undergo a mandatory blood test that also includes HIV testing. However, patients are generally not informed of this and are not told the result even if the test is positive. Those who test positive for HIV should in theory be prescribed antiretroviral therapy (ART), but some studies have shown that the provision of therapy in CIT centres is inadequate²⁶⁰. In a 2015 study of three CIT centres in Guanxi, for example, out of a total of 755 respondents, 725, or 96%, had undergone blood tests. Of these, 68% thought that the exam included the HIV test, but 78% were never informed of the test result. This practice runs counter to the recommendations of the UNODC and the WHO that HIV testing should be voluntary and should always be done with the informed consent of detainees. Pre-test information and post-test advice should be provided, confidentiality protection and access to services such as in-depth examinations and antiretroviral therapy should be guaranteed. The study reports that only 25% of inmates who declared themselves infected with HIV were receiving antiretroviral therapy at the time of the interview²⁶¹. The Law does not explicitly specify the provision of antiretroviral therapy for HIV-infected detainees, but Article 43, which provides for specific physical and mental treatment by type of drug taken, and Article 44 which

²⁵⁶ Office of China National Narcotics Control Commission, "Significance and Content of the Narcotics Control Law", June 25, 2008 <http://www.china.org.cn/e-news/news080625-3.htm>

²⁵⁷ Sarah BIDDULPH, Chuanyu XIE (2011) pp. 987-988

²⁵⁸ YANG Jie, GIUMARRA Melita J. (2020)

²⁵⁹ LIU Yu et al. (2010), pp. 149-154

²⁶⁰ Patrik TIBKE (2017)

²⁶¹ Lorraine YAP et al., "HIV testing in re-education through labour camps in Guangxi Autonomous Region, China (a cross-sectional survey)", *Sexually Transmitted Infections*, 91, 2015, pp. 401-406

requires the provision of assistance and care needed by inmates suffering from serious or contagious diseases, are generic enough to include this type of therapy²⁶².

According to Article 43, a compulsory rehabilitation centre may require patients to perform paid productive work and provide vocational training programs, as an integral part of treatment.

In reality, the work done by patients is often underpaid or unpaid, since the "salary" is used to cover the costs of their stay in the centres²⁶³.

The same article states that centres for compulsory isolated treatment must provide patients with adequate physiological and psychological treatment based on the type of drug taken and the degree of dependence. However, it is not clear how adequate treatment from a medical point of view can be provided considering that the assessment of the degree of dependence is provided by the public security organ, as indicated in Article 38.

5.3.4 Community-based rehabilitation

The Anti-Drug Law only devotes two articles to community-based rehabilitation (社会康复 *shehui kangfu*). At the end of the compulsory isolated treatment period, the public security organ can impose a maximum of three years of community-based rehabilitation on the drug user (Article 48 of the Anti-Drug Law, and Article 37 of the Drug Detoxification Regulation).

There are no substantial differences between community-based treatment and community-based rehabilitation, except that community-based rehabilitation can be withdrawn at any time in the event of a rapid recovery by patients²⁶⁴. The purpose of this additional non-custodial measure is to consolidate the results obtained from compulsory isolated treatment and prevent former detainees from relapsing into addiction²⁶⁵.

In addition to regular urine tests and restricted freedom of movement, addicts during community-based rehabilitation may also be required to engage in manual labour as an integral part of rehabilitation. The use of productive work as an additional tool for rehabilitation is part of the rhetoric about the use of work as a correction tool for minor offenders, and is also supported by Chinese legal and medical experts as it is believed to be able to facilitate physical rehabilitation and mental health of patients, while allowing them to develop work skills useful for reintegration into society. Furthermore, from an economic point of view, the work of the drug addicts would serve the community to support the expenses required by the treatment of the drug addicts themselves. Assigning offenders to productive manufacturing or agricultural work to derive economic benefit

²⁶² Sarah BIDDULPH, Chuanyu XIE (2011) p. 988

²⁶³ ZHANG Sheldon X. & CHIN Ko-lin (2015), p. 7

²⁶⁴ Patrik TIBKE (2017)

²⁶⁵ Sarah BIDDULPH, Chuanyu XIE (2011) p. 989

from individuals for the nation is a concept rooted in Chinese justice, and the imposition of manual productive labour on drug addicts in rehab reveals that they are still primarily regarded as offenders who should be coercively reformed and confined, rather than patients to be treated²⁶⁶.

Nevertheless, Article 49 of the Law states that if the centre arranges work for patients, the work must be paid. Local governments can decide to establish rehabilitation centres or provide support to centres not established by the government, and drug addicts under rehabilitation may voluntarily live and work in rehabilitation centres.

The 2009 Report on China's Drug Situation clarifies that this form of rehabilitation can take place both in a rehabilitation centre and in the community where the individual's residence is registered. Community rehabilitation follows the same modalities as community-based treatment. An individual released from a CIT centre may voluntarily decide to move to a rehabilitation centre, however, many former drug addicts find themselves forced to move there because they are unable to find work and housing in the community after being released from the CIT centre, often left homeless and without support from their families²⁶⁷.

Further provisions on community-based rehabilitation are provided by the 2011 Drug Detoxification Regulation. Even in the case of community-based rehabilitation, as with community-based treatment, the addict must communicate the order received for rehabilitation to the local government of the area where he resides and sign the community rehabilitation agreement. In case of violation of the terms of community-based rehabilitation, the individual can be re-sent to the CIT centre (Article 38). Community rehabilitation personnel must provide psychological treatment and counselling, vocational training, school and work assistance, and medical care (Article 39).

5.4 Treatment News brought by the Anti-Drug Law

The reform of the drug addiction treatment system, which highlights China's changing attitude towards drug use and drug users, is one of the central points of the Anti-Drug Law.

According to the Office of China NNCC, China's new approach to treatment and rehabilitation is "in accordance with the human-centred principle". Drug abusers must be considered patients. They broke the law, but they are also victims of their addiction. The NNCC does not rule out that they should be punished, but they must also be educated and reintegrated into society²⁶⁸.

Regarding the reform of treatment methods, the Law provides a legislative basis for voluntary treatment and exempts those who voluntarily undergo drug treatment from the penalty. Community-

²⁶⁶ Enshen LI (2012), pp. 38-39

²⁶⁷ Sarah BIDDULPH, Chuanyu XIE (2011) p. 989-990

²⁶⁸ Office of China National Narcotics Control Commission, "Significance and Content of the Narcotics Control Law", June 25, 2008 <http://www.china.org.cn/e-news/news080625-3.htm>

based treatment, a non-custodial, more cost-effective and more humane treatment modality is also introduced. In addition, mandatory drug detention measures previously provided for by law have been replaced by compulsory isolated treatment.

While it introduces more non-custodial solutions, the Anti-Drug Law does not reduce the scope of coercive measures such as registration, surveillance and administrative detention. The Law places more emphasis on coercive treatment measures rather than on voluntary treatment. The forms of coercive treatment, custodial and non-custodial, each have a maximum duration of three years, for a total of nine years. Although Chapter IV of the Anti-Drug Law is the longest and most detailed chapter of the Law, the measures are outlined only schematically. The vagueness of the Law allows the State Council and its ministries to approve subsequent regulations to complement the Law, of which the 2011 Drug Detoxification Regulation is the most important. In the meantime, local authorities have tried to implement the Law in various ways also providing ideas for implementation rules at central level²⁶⁹.

Although the definition of drug addiction as a disease and of drug addicts as patients suggests a more health-oriented approach, the Law gives the police, and not the medical personnel, a primary role in the management of drug addiction treatment and does not reduce their powers but on the contrary extends them. The police have the task of registering drug users, supervising community-based treatment and rehabilitation, assessing the presence of addiction in drug users, imposing mandatory isolated treatment and approving the decision to prolong or shorten detention. They also have wide discretionary powers in the implementation of the provisions. The Law preserves the discretion of the police by avoiding providing specific provisions on mandatory procedures, although it strengthens the supervision of the exercise of administrative detention powers and the protection of detainees²⁷⁰.

5.4.1 Abolition of RTLs

The 1990 Decision on Drug Control authorized coercive detoxification in police detention facilities and detention in re-education through labour centres. RTL camps were not originally set up for the detention of drug addicts, however by the 1990s people who relapsed into drug addiction after being released from compulsory detoxification were increasingly sent to these camps. Some camps included rehabilitation sections, while others were specific to drug addicts. The percentage of drug use inmates in RTL camps varied by province, reaching 90 percent of drug addicted inmates in Guangdong province²⁷¹. At the beginning of the 2000s, the percentage of drug addicts among RTL inmates

²⁶⁹ Sarah BIDDULPH, Chuanyu XIE (2011) p. 983

²⁷⁰ Ibid., pp. 990-92

²⁷¹ Ibid., p. 987

became even higher. According to estimates, in 2001 they made up a third of the camp population, and in 2005 they made up fifty percent²⁷².

The RTL centres were administered by the Ministry of Justice and relied on the work of inmates to support the costs of detention. The detainees were divided by sex and sometimes also on the basis of the administrative offense of which they were accused. Former inmates regarding the condition of the centres told Human Rights Watch of a lack of access to addiction treatment, mandatory HIV tests without reporting the result, lack of access to HIV prevention information, interruption of the administration of antiretroviral drugs, risk of HIV infection among inmates, and compulsory unpaid work. They stated that evidently the primary objective of the RTLs was not that of treatment, but that of labour force exploitation. However, despite the fact that work was the main activity carried out inside the centres, once out, the "work experience" in the centres did not facilitate the search for a job, on the contrary the isolation of up to three years from society made difficult to reintegrate²⁷³.

Before the official abolition of the RTLs by President Xi Jinping on November 12, 2013, the passage of the Anti-Drug Law cancelled the validity of the 1990 Decision: the Law removed drug addiction treatment from the domain of the RTLs, even if the centres continued to exist, and mandatory detoxification in detention facilities was abolished. The two forms of detention were merged and replaced by compulsory isolated treatment. Thanks to the Anti-Drug Law, the number of drug addicts sent to the RTLs fell rapidly. In 2008, according to the Ministry of Justice, 160.000 people were detained in the 350 re-education through labour camps, although according to non-governmental sources they would have been about double. Between 2008 and 2013, as the government prepared to officially abolish RTL, many RTL camps were rebranded as CIT centres. By the end of 2012, inmates in RTL camps had officially dropped to 60.000. The official abolition of RTL camps in 2013 resulted in the release of thousands of detainees, mainly sex workers and political prisoners. However, most of the detainees for drug use were not released, but simply transferred to CIT centres²⁷⁴.

Some RTL camps have in fact been declared closed, others have simply changed their name and transformed into centres for drug addiction treatment, or for other forms of arbitrary detention. According to Amnesty International's interviews with former detainees, these new centres operate in a very similar way to RTLs and the main difference is that most of the inmates are drug addicts. It appears that many RTL camps have simply been transformed, or reopened shortly thereafter under the name of centres for the compulsory isolated treatment of drug addiction, without actually changing the *modus operandi*, i.e. continuing to violate the same human rights and international

²⁷² Stephen NOAKES, "A Disappearing Act: the Evolution of China's Administrative Detention System", *Journal of Chinese Political Science*, Vol. 23, 2018, p. 204

²⁷³ Joe AMON, "An Unbreakable Cycle": *Drug Dependency, Mandatory Confinement, and HIV/AIDS in China's Guangxi Province*, New York, Human Rights Watch, 2008

²⁷⁴ Patrik TIBKE (2017), p.8

standards, detain people for years without the right to due process, continue to impose forced labour and perpetrate torture and ill-treatment²⁷⁵.

Although in 2008 the NNCC defined the new treatment modalities in line with the scientific principles and with the times required for drug treatment, and ensured that they included the three necessary phases of treatment, namely physical detoxification, psychological rehabilitation, and social reintegration²⁷⁶, the abolition of RTLs has actually only involved a change in the name of the form of detention, but the ways in which the new centres operate continued to be similar.

5.5 Human rights concerns

The abolition of the use of RTL camps for drug addiction treatment, the legislative basis provided for voluntary treatment, and the emphasis on community-based treatment reflect, at least on paper, China's direction towards a greater protection of human rights.

Despite the official rhetoric describing them as "humane" and "people-oriented", Chinese drug treatment and rehabilitation methods, particularly in compulsory isolated treatment centres, have come under criticism from the international community regarding the violation of human rights even after the entry into force of the Anti-Drug Law.

In a 2010 note, the then Executive Director of the UNODC, Antonio Maria Costa, said that according to the UN Charter, drug-related problems must be managed in accordance with the state of law and with respect for fundamental human rights and freedoms. These include the right of addicts to due process and protection against arbitrary detention and forced labour. According to the right to health, drug addiction must be treated like any other health problem, and drug addicts have the right to medical treatment in detention facilities and the right to informed consent for medical treatment, so they cannot be forced to undergo addiction treatment. In light of this, compulsory isolated treatment in China has been criticized for its arbitrary and punitive nature and accused of violating human rights²⁷⁷.

Both before and after the publication of the Anti-Drug Law some human rights NGOs such as Human Rights Watch and Amnesty International published reports denouncing human rights violations against drug addicts in compulsory treatment centres in China.

In a 2008 report, Human Rights Watch denounced the lack of medical and psychological care in detoxification and re-education through labour centres. The decision to send a drug user to a detoxification or to a RTL centre was not based on any medical assessment or criteria, but depended

²⁷⁵ Amnesty International, *"Changing the soup but not the medicine?": Abolishing Re-education Through Labour in China*, London, United Kingdom, December 2013, p. 35

²⁷⁶ Office of China National Narcotics Control Commission, "Significance and Content of the Narcotics Control Law", June 25, 2008 <http://www.china.org.cn/e-news/news080625-3.htm>

²⁷⁷ Sarah BIDDULPH, Chuanyu XIE (2011) pp. 980

on a wide range of factors including the number of inmates in the facilities, the amount of money drug users and their families could pay for taxes or penalties, and addicts' drug history. Furthermore, sentences were imposed rarely in court and not respecting the right to a due process. Inside the centres, drug users were treated as criminals and not as patients. Lack of therapy and prison-like conditions violated standards for the treatment of addiction. The spread of HIV and tuberculosis was facilitated in the centres, and detainees were often victims of physical, psychological, and sexual abuse. Many inmates had to pay for their time in the facilities, as well as being subjected to forced labour. Although the drug treatment situation was starting to change and the government was placing greater emphasis on HIV prevention, the availability of HIV treatment drugs and services such as substitution drug therapy, detention in the centres continued to be the most common treatment method. Not only treatment within the centres but also community services following release from detention were scarce and this often resulted in relapse into addiction. Detention for drug use led to what some former inmates have defined as the "unbreakable cycle" of incarceration, release and stigmatization in society, unemployment, discrimination, health problems and a return to drug use²⁷⁸.

In another report published in 2010, two years after the release of the Anti-Drug Law, Human Rights Watch stated that, despite the new rhetoric about the approach to treatment, in reality, detention continued to be used as the primary method of "treatment", while in communities the government promoted methadone therapy and needle exchange programs. The NGO argued that the same abuses for which detoxification centres and especially RTLs were criticized have been replicated under another name in the new mandatory isolated treatment centres. Its field research shows that the three necessary steps of physical detoxification, psychological rehabilitation, and social reintegration, that according to the NNCC are guaranteed in the centres, are not actually respected²⁷⁹. According to Amnesty International, after the definitive abolition of RTLs in 2013, drug detention centres, far from no longer being a punitive measure, have also been used to punish individuals considered dangerous to society such as political and religious dissidents in the absence of evidence of their drug addiction²⁸⁰.

According to the WHO and the UNODC, mandatory treatment should only be imposed in the presence of particular circumstances in which the individual's dependence poses a high risk for himself and for others. Again, however, mandatory treatment is legally and ethically justified only if scientifically and medically adequate treatment is provided.

Detention centres for drug addicts violate a wide range of human rights including: the right to freedom from torture and cruel, inhuman and degrading treatment or punishment; the right to freedom from

²⁷⁸ Joe AMON (2008)

²⁷⁹ Joe AMON (2010)

²⁸⁰ Amnesty International (2013), p. 9

arbitrary arrest and detention; the right to a fair trial; the right to privacy; the right to the highest attainable level of health; and the right to freedom from forced labour²⁸¹.

5.5.1 Right to health

Detention in CIT centres violates the right to health, including the right to receive treatment with informed consent.

Articles 43, 44 and 45 of the Anti-Drug Law seem to protect the health of persons subject to compulsory treatment, even if, even in this case, the provisions are not specific.

Article 43 states that drug addicts in CIT centres must receive specific treatment based on the type of drug taken and the degree of dependence. Taking into account that the assessment of the degree of dependence is made by the public security organ, the medical value of this provision is not clear, especially considering that, although Article 45 of the Law requires CIT centres to be provided with medical personnel on site, researchers who visited the centres and former detainees reported an almost total lack of access to medical care and treatment for evidence-based addiction, and the absence of services such as cognitive behavioural therapy²⁸².

In addition, although Article 45 states that doctors who work in CIT centres who have the right to prescribe narcotic and psychotropic drugs can administer them to drug addicts under treatment, Opioid Substitution Therapy (OST) is generally not prescribed. OST, like methadone maintenance therapy, has been shown to be effective in improving the quality of life of opioid addicts, reducing the relapse and the injecting drug use rates, and the spread of diseases such as HIV and hepatitis C. In CIT centres, on the other hand, detainees often have to undergo forced detoxification and suffer from withdrawal symptoms without administering drugs to relieve them. Some former detainees reported that drugs to relieve withdrawal symptoms are paid and no one can afford them. For long-time addicts, this can be very painful, traumatic, or even fatal.

The treatment of illicit drug users in China violates the country's obligations under international human rights law. International standards of the right to health of detainees stipulate that no discrimination should be made based on the legal status of persons, therefore detainees must be given the same standards of health care as the rest of the community. Failure to provide addiction treatment and life-saving medical assistance is not only a violation of Chinese and international law, it can also

²⁸¹ J. Joseph AMON, Richard PEARSHOUSE, Jane COHEN, Rebecca SHLEIFER, "Compulsory drug detention centers in China, Cambodia, Vietnam, and Laos: Health and human rights abuses", *Health and Human Rights*, Vol. 15, No. 2, December 2013, p.133

²⁸² J. Joseph AMON et al. (2013); Joe AMON (2010)

amount to torture²⁸³. The UN Commission on Human Rights has in fact included among the forms of torture the refusal to provide medical treatment to alleviate withdrawal symptoms²⁸⁴.

According to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the right to health includes the right not to be subjected to non-consensual treatment and testing, and to be fully informed about the health procedures to which one may be subjected²⁸⁵.

Drug addiction should therefore be treated like any other health problem, and addicts should have the right to informed consent for medical treatment, so they could not be forced into treatment for addiction. Compulsory treatment is in itself a practice that violates the right to health.

In addition, detainees are subjected to mandatory HIV testing, often unaware of what they are being tested for, and are not told the result even if it is positive.

Article 44 of the Anti-Drug Law protects people with disabilities and serious illnesses by establishing to provide them with the necessary nursing and medical assistance. The Law also provides for the isolation of people suffering from contagious diseases, and protective measures against those who could commit acts of self-harm. However, former detainees also reported a frequent lack of access to HIV treatment, as well as prevention. Many of those who were taking antiretroviral drugs prior to detention were forced to suspend treatment, and those who were able to continue did so without the supervision of medical staff. Contrary to the provisions of the Law, compulsory treatment centres are often places of spread of infectious diseases. In addition to HIV/AIDS, tuberculosis is also a major problem in detention centres. It is widespread among inmates and many inmates contract the disease during detention due to the lack of treatment and the fact that sick people are not isolated²⁸⁶.

In addition, former detainees are frequently denied access to health care in general and basic medical care. They also reported widespread drug use within the centres, and that detainees are released on the basis of arbitrary decisions, not based on actual treatment success or medical assessments. It is common practice to release critically ill inmates, leaving them without medical assistance, with no resources to access to it, and with little hope of survival.

Detention centres have not only been accused by the UN Commission on Human Rights of violating international human rights laws, but also of constituting illegitimate substitutes for evidence-based measures such as substitution therapy, psychological therapy and other forms of legitimate treatment. Far from providing the highest attainable standard of health, these detention centres seem to compromise the physical and mental health of detainees, as well as providing no support in addiction treatment²⁸⁷.

²⁸³ Joe AMON (2010)

²⁸⁴ J. Joseph AMON et al. (2013), p.134

²⁸⁵ Ibid.

²⁸⁶ Joe AMON (2010)

²⁸⁷ J. Joseph AMON et al. (2013), p.134

5.5.2 Forced labour

Article 43 of the Anti-Drug Law expressly clarifies that work in the centres must be paid for and that the necessary professional training must be provided.

In fact, some former detainees told Human Rights Watch that they had to work up to 18 hours a day in poor conditions and without pay. The centres are described as factories where they have to work without being paid and are subjected to violence and intimidation. Compulsory isolated treatment violates international prohibitions on the use of unpaid forced labour²⁸⁸.

The International Labor Organization Convention on Forced Labor defines "forced or compulsory labor" as any work or service required of an individual under the threat of punishment, or for which the individual has not volunteered. In China, the work of inmates has been justified as vocational training. However, this is unskilled work, for which the education and interests of individuals are not taken into consideration. In addition, the existence of production quotas and the punishments in the case of failure to reach the quotas clearly describe the condition of forced labour. International law does not include work required as a result of a conviction in court, but people detained in compulsory treatment centres are not brought to trial, the work that is imposed on them is not voluntary, and is performed under threat of a punishment. Therefore, it undoubtedly falls under the definition of forced labour²⁸⁹.

5.5.3 Right to freedom from arrest and arbitrary detention, and right to due process

CIT centres detain people suspected of using drugs, even without a true diagnosis of addiction, for long periods of time. In these facilities that are neither prisons nor hospitals, people are held without due process²⁹⁰.

According to Article 40 of the Anti-Drug Law, drug users sent to compulsory treatment centres are allowed to appeal to the court, but in practice the right is regularly denied.

Under Article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR), of which China is a signatory, no individual can be arbitrarily arrested or detained. An individual can be deprived of his liberty only on the grounds and according to the procedures established by law²⁹¹. Furthermore, international law establishes the right of a detainee to challenge the legitimacy of his detention and the right to due process²⁹².

²⁸⁸ Joe AMON (2010)

²⁸⁹ J. Joseph AMON et al. (2013), p.134; Giulia ZOCCATELLI, "Punish and Cure: Forced Detox Camps, Reeducation through Labour, and the Contradictions of China's War on Drugs", *Made in China Journal*, Vol. 4, Issue 3, 2019, p. 98

²⁹⁰ Joe AMON (2010)

²⁹¹ United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁹² J. Joseph AMON et al. (2013)

Interviews with former detainees revealed that individuals are arrested by the police and detained without due process. No one was allowed to have recourse to a lawyer, a formal hearing before a judge, or a trial. Individuals are often detained multiple times and it has frequently been reported that at the beginning of detention they were unaware of when the treatment period would end, and that often the period was extended either as a measure for breach of treatment rules or for any reason stated²⁹³. Human Rights Watch argued that the government's human-centred approach to treatment is an empty rhetoric, not reflected in a reality in which many drug addicts still remain stuck in the never-ending cycle of addiction-detention-relapse into addiction-new detention period.

5.5.4 Right to privacy

The drug user registration system linked to the ID card and the dynamic management mechanism violate the right to privacy of citizens and often hinder their reintegration into society. However, the violation of the right to privacy of citizens by the Chinese government and the leaking of personal data is an issue that affects not only drug addicts, but all Chinese citizens.

As with the drug control legislation, the legislation on the protection of personal information has so far been made up of a scattered set of regulations, according to some scholars consisting of up to 200 different rules. Also following the pressure exerted by the West to fill this gap in the legislation, in recent years China is committed to creating the first system dedicated to the protection of privacy and personal data.

The 2016 Cybersecurity Law, the Data Security Law (whose draft was published for public comments on 3 July 2020) and the Personal Information Law (whose draft was published for public comments on 21 October 2020) constitute the three fundamental laws of the system. However, the laws are more about regulating the use of data by companies in China and protecting consumer rights, rather than about regulating the use of data by authorities to monitor citizens. There are essentially no limits placed on the government's ability to collect data "necessary to maintain public safety," and there is no indication of the responsibilities of government entities that collect the data and who should bear the responsibility if they leak. The presence of countless databases of personal information posted online shows that the level of information security in China is questionable²⁹⁴.

²⁹³ Ibid.

²⁹⁴ Lavender AU, Benjamin WILHELM, "China's New Data Protection Law Won't Rein in State Surveillance", in *World Politics Review*, October 28, 2020, <https://www.worldpoliticsreview.com/trend-lines/29174/china-s-new-data-protection-law-won-t-rein-in-state-surveillance> ; on the new laws of protection of privacy and personal data see also: George QI, Qianqian LI, Gretchen A. RAMOS, Darren ABERNETHY, "China Releases Draft Personal Information Protection Law", in *The National Law Review*, Vol. XI, No. 58, February 27, 2021, <https://www.natlawreview.com/article/china-releases-draft-personal-information-protection-law> ; Marcel GREEN, "China's Draft Data Security Law: A Practical Review", in *The Diplomat*, September 24, 2020, <https://thediplomat.com/2020/09/chinas-draft-data-security-law-a-practical-review/>

The case of the leaking of personal data of drug addicts falls within the more general context of the lack of a national law to protect the violation of the privacy of Chinese citizens, even by government authorities.

5.5.5 Ill-treatments

According to Article 7 of the ICCPR, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁹⁵ The Anti-Drug Law contains a theoretical attempt to protect detainees from possible physical and psychological abuse by the centre staff.

Article 44 of the Law explicitly prohibits the staff running compulsory treatment centres from inflicting corporal punishment on detainees, mistreating or humiliating them. However, there are no guidelines for the implementation of these provisions and there are no indications on how detainees should report the abuses suffered. Furthermore, the common practice of detainees' violence against other detainees commissioned by the guards is not taken into account by the provision²⁹⁶.

Article 69 establishes that acts of physical punishment, abuse or insult perpetrated against drug addicts under rehabilitation by workers of the public security organ, the department of justice or other competent departments are punished according to the law. However, there have been many cases of charges against CIT centre staff of covering up physical abuse of detainees, including cases that have resulted in the deaths of individuals²⁹⁷.

Physical violence by centre staff has been cited as a common element in the life of detainees. Beatings and sexual abuse were also confirmed by former guards of the centres. Cases of physical ill-treatment and forced isolation have also been reported, in case of refusal by detainees to do the work, or in case it was done in a way deemed inappropriate. Inmates were also required to perform physical exercises, often accompanied by self-critical anti-drug slogans such as: "Drug use is bad, I am bad"²⁹⁸.

5.5.6 Discrimination

Although the Law provides for the reintegration of drug users into society as an integral part of the treatment and rehabilitation process, the social stigma is still very present. Monitoring practices that allow the police to be alerted whenever a drug user enters a hotel, applies for a job or uses harm reduction services, to reach them, arrest them in front of other people and have them tested for urine, contribute to the social marginalization and to make drug users fall back into addiction.

²⁹⁵ United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

²⁹⁶ Joe AMON (2010)

²⁹⁷ Ibid.

²⁹⁸ J. Joseph AMON et al. (2013), p.131; Giulia ZOCCATELLI, (2019), pp. 98-99

Discrimination against drug users by families and the community is a widespread problem, reinforced by the fact that the drug user registration system is linked to the ID card. Former detainees told of the difficulty of finding a job after detention, both because their drug use history is linked to their identity card, and because other members of the community often disclose their background.

Article 70 of the Anti-Drug Law intends to protect drug users undergoing rehabilitation from discrimination: “Where an entity or its worker discriminates against drug addicts under rehab in aspects of enrollment, employment or social security, etc., the administrative department of education or labor shall order it/him to correct, and, if any losses have been caused to the party concerned, order it/him to honor its/his liability for compensation according to law.”

However, it is difficult to reconcile this inclusive and anti-discrimination approach with what derives from Article 9. In fact, the Law encourages people in the community to report to the authorities those suspected of using drugs, favouring the development of an environment that is anything but inclusive and conducive to reintegration into society, feeding current and former drug users the fear of the people of the community where they live²⁹⁹.

5.5.7 Fear of arrest

Outside the treatment centres, current drug users and former drug users have to live with the fear of arrest. Especially close to important events, or anniversaries such as the International Day Against Drug Abuse and Illicit Trafficking on June 26, arrests and unjustified detentions become more frequent as the police have to reach the quota of people arrested and detained in compulsory treatment centres.

Many are afraid to show themselves in public for fear of arrest. In fact, the police often arrest and detain drug users based on their past contacts with the individual and, if the quota is to be met, some former detainees are returned to detox centres even without evidence of current drug use, and individuals are arrested even only if they “look like a drug user”, and required to take a urine test. In some locations, the police also wait for drug users outside pharmacies or methadone clinics.

The fear of arrest and detention results in drug users reluctant to use social services such as community-based MMT programs, needle-exchange programs, HIV prevention, and the HIV test service³⁰⁰. In fact, the government prevents entities providing the services from keeping patients’ information confidential, and IDUs’ access to these services is hindered by the public security organs which continue to consider drug users as criminals to be arrested and detained. Being arrested means

²⁹⁹ Joe AMON (2010)

³⁰⁰ J. Joseph AMON et al. (2013), p. 127; Giulia ZOCCATELLI, (2019), p. 96

facing the disease in a compulsory treatment centre where medical care is often not provided, or facing social marginalization and discrimination if information is disclosed.

Police behaviour violates the human right recognized by international law to obtain life-saving health services without fear of punishment or discrimination. These practices constitute a barrier to access to health information, sterile materials such as needles and syringes, and opiate replacement therapy, as well as a violation of the right to health³⁰¹.

5.6 Case study: Sunshine Project

The more humane approach to drug addiction treatment advocated by the government rhetoric was reflected above all by the introduction of the community-based treatment and rehabilitation methods in the Anti-Drug Law.

Proper implementation of community-based treatment and rehabilitation measures can undoubtedly be a more valid and cost-effective alternative to compulsory isolated treatment, as well as more respectful of human rights. Compared to voluntary treatment in medical institutions, it also has the advantage of not isolating individuals, allowing them to maintain contact with society, in theory facilitating reintegration.

Although the vagueness of the Law has raised doubts about how to implement the method, both among the drug addicted population to which the service is aimed and among the competent local authorities, there have been positive examples of implementation.

One of these positive examples is the "Sunshine Project" which, thanks to its innovative system and the results achieved, has attracted the attention not only of Chinese experts, but also of the international community.

The Sunshine Project (阳光工程 *Yangguang Gongcheng*) was launched in 2011 in Guizhou Province. The different approach to drug addiction of this community project has made it possible to obtain noteworthy results, especially in assisting drug addicts in finding a job and reintegrating into society. Guizhou was among the provinces of China with the highest number of drug addicts. At the end of 2011 there were 117.147 drug users registered in the province (out of a population of about 35 million inhabitants), with an increase rate of almost 14 percent, up from the previous year. This was primarily due to the geographical position of the province. It is in fact located inland to the southwest of the country and borders the province of Yunnan to the west. Consequently, it is close to the area of the world's largest drug producers, the Golden Triangle. Guizhou serves as a channel for drug trafficking and the presence of drug-related activities in the province is substantial compared to other provinces.

³⁰¹ Joe AMON (2010)

In addition to the geographical location, another factor that has favoured the spread of drug-related activities and the increase in the number of drug addicts is the important presence of migrant workers. Many of them come from poor backgrounds in mountainous areas, have received a low level of education and are unaware of the risks associated with drug use; while others, with no professional skills, are attracted to the "easy money" promised by drug trafficking and often end up becoming drug addicts too. As a result, drug-related criminal activities such as thefts and robberies also make up more than 15 percent of criminal cases in some places³⁰².

One of the most pressing and difficult challenges facing drug addiction treatment and rehabilitation is how to prevent addicts from falling into the addiction-treatment-relapse vicious cycle and allow them to reintegrate into society and return to a normal life.

The prototype of the Sunshine Project was realized starting from 2006, so before the publication of the Anti-Drug Law, in the city of Dunnyun. In addition to being the political, economic and cultural centre of the south of the province, Dunnyun is also the main channel of drug trafficking and dealing in the province. The significant presence of drug addicts made it necessary to take effective measures to combat the problem. Among these, in 2006, the founding of the "Love Baseball Factory", a factory for the production of baseball balls where drug addicts were offered not only a chance to work, but also the opportunity to receive professional training and to make free use of the methadone maintenance treatment service as an aid to get out of addiction. Drug addicts were provided with MMT and a job, but had to adapt to the rigid system of rewards and punishments, and low pay.

This model gained the attention of the Guizhou Provincial Drug Control Commission and was adopted as a prototype for the Sunshine Project.

The project, launched in 2011, primarily consisted in the involvement of a group of local enterprises in community-based treatment and rehabilitation work. These enterprises, behind the support of tax breaks and subsidies provided by the local government, were willing to hire individuals with a history of drug use. The project, carried out by the narcotics office of the provincial police department, initially employed about 160 people³⁰³.

The name of the project refers to the fact that it aims to metaphorically bring sunlight back into the lives of drug addicts. In the metaphor, the sun, without which there is no life, is the society led by the Party and the government, and relying on their help these people, who have lost their way, have the opportunity to return to normality and life³⁰⁴. A former drug addict rehabilitated thanks to the project

³⁰² The People's Daily, "Guizhou Sunshine Project, the Road of Innovation", December 27, 2012 <http://en.people.cn/90882/8073272.html>

³⁰³ CUI Yadong, "'Sunshine Project'—A way of solving problems in drug control", in *The People's Daily*, January 7, 2013, <http://en.people.cn/90882/8081876.html>

³⁰⁴ The People's Daily, "Natural Sunlight, the Source of Life", December 27, 2012 <http://en.people.cn/90882/8073270.html>

in an interview with *The People's Daily* declared: "I am very thankful for the 'sunshine' from the Party and the government, which lets me feel the warmth of the big family of the society, and enables me to return to society, retrieve confidence, and make today's achievements. I am sure that I will create a world for myself on the path of life"³⁰⁵. His words clearly exemplify the realization of the ideal that the Sunshine Project aims for.

The Anti-Drug Law explicitly states that drug addicts must undergo community-based treatment. The high relapse rate is the main challenge faced by this method which provides that individuals do not live in an isolated environment, so they are potentially more exposed to the risk of relapse. One of the most determining factors for relapse for drug addicts during treatment and rehabilitation is the difficulty of reintegrating into society, and for this purpose it is essential to find a job. Finding a job in fact offers individuals the opportunity to occupy their time, have a home, regain consideration by family and society and self-confidence, allowing them to have a concrete possibility of reintegration into society and return to normality. Being able to reintegrate without having a job is virtually impossible, and it is up to local governments to ensure that drug addicts have the opportunity to find employment.

The innovation brought by the Sunshine Project consists in the integration of the employment factor into the existing "three-in-one" treatment and rehabilitation model. To the three pre-existing aspects of physical detoxification, psychological rehabilitation, and reintegration into society, the new model has added a fourth: employment support. Based on this new "four-in-one" model, the Sunshine Project has established "sunshine enterprises" and "sunshine homelands", giving marginalized people the opportunity to regain a place in society and rebuild their lives starting from work.

In 2012, more than 90 enterprises were participating in the construction of the project in Guizhou province, and already more than 50 sunshine enterprises had been completed and employed 2162 people. In Guizhou province, local governments at various levels have included expenses for community-based rehabilitation and the reintegration of drug addicts into their financial budgets. The provincial finance department has allocated a fund of 3.18 million dollars, i.e. more than 20 million yuan, for the realization of the Sunshine Project until 2014. Local governments have also established a budget for the MMT service so that they can provide free therapeutic services to drug addicts employed in the businesses involved. Professional training and supervision mechanisms are also financed by the government fund.

The sub-district offices play a guiding and coordinating role for the various departments that deal with the different aspects of the project. However, the project involves the active participation of all

³⁰⁵ LIU Zhimin, "Establishing 'Sunshine Project' Innovation Rehabilitation Mechanism and Building a Harmonious Society", in *The People's Daily*, January 6, 2013, <http://en.people.cn/90882/8080594.html>

the society, including not only relevant government departments, community leaders and managers entrepreneurs, but also volunteers and other sectors of society. In practice, community treatment working groups made up of volunteers and full-time staff who are recruited through a public competition. In 2012, the staff in the province already consisted of more than 3200 members³⁰⁶.

The Anti-Drug Law, allowing drug addicts who voluntarily seek help from the police or the health system to be exempt from any sanctions, laid the legal basis for the development of the Guizhou project. The Sunshine Project is a practical application of the more humane and health-oriented approach to drug addiction introduced by the Law.

Although this type of project requires the allocation of substantial financial funds, the investment nature of the project must be considered. In fact, a year after the launch of the project, the local police had announced that the rates of unemployment, crime and the spread of HIV among drug users had dropped sharply and the relapse rate among drug addicts in the province was also far below the national average, facilitating the maintenance of public order. This result was also achieved thanks to the provision of the MMT service offered to drug addicts who could also take their own dose during the lunch break³⁰⁷.

The Sunshine Project deals with managing both the symptoms and causes of addiction, not only providing medical and psychological care, but also addressing the social causes of addiction. Thanks to the involvement of local businesses, it also aims to restore society's trust in drug addicts, with the aim of eliminating discrimination and marginalization.

Another important aspect of the Sunshine Project is that it is seen by the Chinese government as a model for advancing the cause of human rights in the country. It is described as a project that puts people first, and that respects and guarantees the human rights of drug addicts³⁰⁸. Also Human Rights Watch, which had denounced the presence of ill-treatment and forced labour in the Chinese treatment system, particularly in the south-western provinces of the country where there is a high concentration of drug traffickers and drug addicts, and the latter are treated with particular harshness, highlighted the atypical nature of this approach.

The public-private partnership model is the central innovative element of the project. The provision of subsidies or other forms of government support to private companies that agree to hire recovering addicts solves the economic issues that were at the root of entrepreneurs' reluctance. In this way, in

³⁰⁶ CUI Yadong, "A new life with Sunshine", in *China Daily*, June 27, 2012

<http://global.chinadaily.com.cn/a/201206/27/WS5a2f5100a3108bc8c6723089.html>

³⁰⁷ The Economist, "Kicking the habit", September 15, 2012 <https://www.economist.com/china/2012/09/15/kicking-the-habit>

³⁰⁸ WU Dahua, "'Sunshine Project': Double Implications of Innovating Social Management on Drug Control and Ensuring the Human Rights of Drug Addicts", in *The People's Daily*, January 6, 2013, <http://en.people.cn/90882/8080602.html>

fact, the reduced efficiency of drug addicts at work, due to lack of education, health problems and the need for a rather long period of training, is compensated for the economic benefits received by the government³⁰⁹.

The Sunshine Project immediately gained media attention both in China, at national and provincial level, and abroad, and was the subject of numerous interviews and academic researches.

In an interview, Professor Yu An of Tsinghua University explained that, while some governments decide to coordinate with social entities to achieve public interest objectives, the province of Guizhou has chosen to collaborate with market-based enterprises. These enterprises, while remaining maximum profit companies, also assume social responsibilities under the leadership of the government. From a legal standpoint, it is a type of market-oriented commercial business model based on public interest contracts. This approach distinguishes the Sunshine Project model not only from the models adopted by other provinces, but also from those adopted by other countries. Several scholars and experts have proposed making the Sunshine Project a national strategy and also adapting the law to this model³¹⁰.

According to official data, up to August 2020, 53.120 drug addicts and 127 companies participated in the project. Until then it has been extended to 30 other cities and provinces³¹¹.

On the one hand, this model focuses on the importance of work in the treatment and rehabilitation process. The traditional idea of reform through work and moral transformation of the individual is therefore maintained: from a person who has strayed from the correct path, he/she becomes a person who regains possession of his/her own life, therefore also of his/her working life and returns to be a productive individual, participant in the construction of society.

On the other hand, the model also includes a health-oriented and human-oriented approach. Engagement in work activities is combined with the medical treatment of addiction. The model advances treatment on the dual track of evidence-based medical care, and individual and social rehabilitation through work, which is the first step towards reintegration.

This model seems to solve some of the main difficulties in implementing community-based treatment and rehabilitation. The problem of poor collaboration by employers of local enterprises who were reluctant to hire drug addicts was solved thanks to the system of granting tax breaks and subsidies to entrepreneurs by governments. Local governments in turn were encouraged to see the project as an

³⁰⁹ The Economist, “Kicking the habit”, September 15, 2012 <https://www.economist.com/china/2012/09/15/kicking-the-habit>

³¹⁰ SU Xianlong, “Guizhou Makes Significant Achievements in Community-based Drug Treatment & Rehabilitation Pattern: The way to facilitate ‘Sunshine Project’ under challenges”, in *The People’s Daily*, January 5, 2013, <http://en.people.cn/102775/8079207.html>

³¹¹ Fabio ZANINI, “China eases drug fight, but still forcibly hospitalizes people”, in *Folha de S.Paulo*, December 1, 2020, <https://arte.folha.uol.com.br/mundo/2020/altered-state-drug-policy-around-the-world/china/treatment-of-drug-abusers/>

investment. By allocating funds to the project and providing subsidies to local entrepreneurs, it is in fact possible to reduce the rate of unemployment, crime, the spread of infectious diseases related to drug use, and the relapse rate. This contributes primarily to reducing the costs of managing public security.

In addition to representing an ideal solution from the economic point of view, as it constitutes an efficient economic model, producing a win-win effect for drug addicts, companies, the Party and governments, from an ideological point of view, the model seems to embody the concepts of maintaining social stability and harmonious society, and it puts into practice all the new treatment principles such as people orientation, scientific drug treatment, comprehensive treatment, and care and rescue. The project aims to improve and give hope to marginalized people in difficulty instead of punishing them, in line with the principle of people orientation.

The way it has been publicized by the government, and its media success both in the country and abroad, suggest that it has really started a positive turning point in the implementation of the new measures imposed by the Anti-Drug Law. Nevertheless, given the almost total absence of updated data available on the project after 2013, it is difficult to determine to what extent the emphasis placed by the government on the project was a propaganda move to give the international community a concrete signal of a changed approach to drug treatment in China and silence the criticism, or was moved by real enthusiasm for a positive treatment implementation model, which served in effect as an example for the rest of the country.

CHAPTER 6: THE DRUG PROBLEM UNDER XI JINPING ADMINISTRATION

6.1 Current drug control situation in China

In the first decade and the beginning of the second decade of the 2000s, there has been a further worsening of the drug problem. Both the number of drug-related crimes and the number of registered drug users significantly increased.

Total registered drug addicts in China

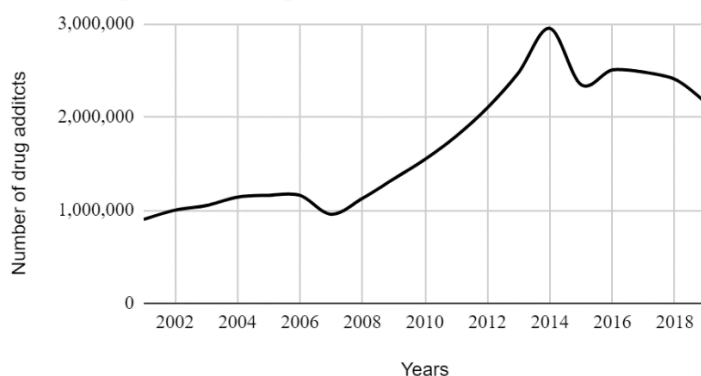


Fig. 4 Total registered drug addicts in China. Source: Report on China Drug Situation 2002-2020

From 2001 to 2014, the number of drug users registered in China increased steadily, with a slight decline only in the two-year period 2007-2008.

At the end of 2014, there were 2,95 million registered drug users in China, but the NNCC estimated the real number to be more than 14 million. The number of synthetic drug users was up by more than 35 percent compared to previous

years, reaching 1,46 million in 2014, and surpassing for the first time the number of heroin addicts, which stood at 1,45 million. Although the growth in the number of heroin users had stopped, a high relapse rate remained. Furthermore, the number of young people abusing synthetic drugs was on the rise, reaching 75 percent of new drug users under the age of 35 by 2013. The growing number of drug addicts and the spread of very addictive drugs had undermined the credibility of the anti-drug campaign of those years³¹². The deputy director of the NNCC, Liu Yuejin 刘跃进, therefore strongly suggested a revision of the legislation with the imposition of more severe sanctions. In reality, drug offenses in China were already receiving harsher penalties on average than other offenses and the number of death sentences was high, but this seemed to have had a limited impact on the spread of drug use and the increase in drug-related crimes.

The worsening of the situation described above was followed by an intensification of repressive measures, which was also the result of the expansion of the drug problem in the hinterland and in Liaoning province in the north of the country, although Guangdong, Chongqing and Zhejiang remained the three provinces most affected by the drug problem and related crimes.

³¹² Xinhua, "Drug users exceed 14m in China", in *China Daily*, May 11, 2015, https://www.chinadaily.com.cn/china/2015-05/11/content_20686860.htm

Since the beginning of the administration of President Xi Jinping 习近平, drug control has occupied, an important position. The government considers it a major component of national security strategy and rule of law development. From 2013 to 2015 drug control in China was characterized by an intensive enforcement of anti-drug policies and the implementation of new initiatives.

Massive new drug repression campaigns have been conducted, such as the three-year "Thunder Anti-Drug Campaign" (雷霆扫毒专项行动 *Leiting sao du zhuanxiang xingdong*) to crack down on drug production and distribution, which began in 2013 in Guangdong province, a primary production and supply base for methamphetamine and ketamine in China, and the "Hundred Cities Drug Campaign" (百城禁毒会战 *Bai cheng jindu huizhan*), from September 2014 to March 2015, undertaken by the MPS. As evidence of the government's determination to crack down on the problem, also with the aim of issuing effective warnings to the population, in 2014 there were numerous drug arrests of public figures in the entertainment world, including Jackie Chan's son Jaycee, arrested and sentenced to six months in prison for possession of marijuana and "sheltering others for drug abuse". Although most of those arrested were Chinese citizens, the number of arrests has also increased among foreigners, sometimes giving rise to diplomatic problems with the countries of origin of those arrested³¹³.

In addition, special attention was also given by the government to prevention and education of young people and to community-based treatment. The three-year "Education Plan to Prevent Adolescent Drug Abuse" (青少年毒品预防教育工程 *Qingshaonian duin yufang jiaoyu gongcheng*), or "6.27 project", and the five-year "Community Detoxification and Rehabilitation Project" (社区戒毒社区康复工程 *Shequ jiedu shequ kangfu gongcheng*), or "8.31 project", were launched in 2015 by the NNCC to reduce the demand for illicit drugs³¹⁴.

The 6.27 project started on June 27, 2015. In order to implement the instructions of Xi Jinping, and the Secretary of the Central Political and Legal Affairs Commission of the Communist Party of China, Guo Shengkun 郭声琨, the NCB has decided to start a new wave of drug prevention and education for young people.

The 8.31 project is a nationwide project on community drug treatment and rehabilitation launched on August 31, 2015.

These projects are a reflection of social and political changes in the anti-drug work. The Community Detoxification and Rehabilitation Project, for example, reflects the changes in Chinese social

³¹³ Shannon TIEZZI, "China's Growing Drug Problem", in *The Diplomat*, May 28, 2015, <https://thediplomat.com/2015/05/chinas-growing-drug-problem/>

³¹⁴ Li Xiqing, DU Peng, ZHANG Wei, ZHANG Lei, "Wastewater: a new resource for the war against illicit drugs", *Current Opinion in Environmental Science & Health*, 9, 2019, pp. 73-76

governance, the improvement of which has emerged as a fundamental step. China's current social governance is a type of social co-governance, characterized by the synergy between the government, the market and the society³¹⁵. The 8.31 project has been carried out to encourage social subjects to participate in anti-drug affairs. Therefore, the participation of social workers, volunteers and other groups in anti-drug work is encouraged by the social governance model, and it has gradually become large-scale in practice. However, specific issues regarding their participation are not defined in the Anti-Drug Law or other relevant regulations, but only at the level of mechanism and policy. The only recent normative document, derived from project 8.31, is the "National Community Drug Rehabilitation Program (2016 —2020)" (全国社区戒毒社区康复工作的规划 (2016— 2020 年) *Quanguoshequ jiedu shequ kangfu gongzuo de gui Hua (2016-2020 nian)*) which will be discussed further in the following paragraph on drug treatment.

The 6.27 project does not have a corresponding normative document. Although the establishment of these policies and projects have demonstrated the country's innovative thinking in the management and implementation of drug work, however, a state of legislative delay must be observed³¹⁶.

In 2015, a new wave of People's War on Drugs was launched. The intensification of the fight against drugs has made it possible to keep the drug situation under control throughout the country and the government has declared that it has managed to contain the problem and maintain social stability.

However, the NNCC realistically described a future outlook on the situation of the drug problem in China that was far from positive. The penetration of drugs from abroad had increased, the problem of domestic drug production had become prominent, the problem of drug abuse continued to spread, and the social harm of drugs had become more severe. Considering economic globalization and the accelerated development of social informatization, the domestic drug problem was expected to continue to develop and spread for a long time, and drug work had to prepare for enormous pressures and challenges.

Data on drug abuse in 2015 revealed a decline in users of heroin and other opioids, compared with an increase in synthetic drug users. The number of registered drug users had fallen to 2,345 million, of which about 41 percent were abusing heroin and other opioids, and about 57 percent were abusing synthetic drugs.

The spread of new types of drugs also led to changes in the profile of drug users. The number of people abusing drugs covered all age groups, education levels and social occupational groups, but synthetic drugs became more and more diffused among young peoples under 35 years which

³¹⁵ REN Yong'an, LU Xianyang, *A New Study on the Judicial Administrative System with Chinese Characteristics*, Singapore, Springer, 2020, p. 37

³¹⁶ Li Shiting 李施霆 (2018), p. 120

accounted for more than 60 percent of drug addicts in 2015. In the same year there was also an increase in drug-related crimes which endanger social security and public safety, such as robbery, self-harm, violence and driving accidents³¹⁷.

2016 was the first year since President Xi Jinping took office that the number of people arrested for drug production or trafficking decreased, but the number of registered drug users increased again after the slight decrease of 2015. Xi stated that he was determined not to loosen his grip until a radical victory in the war on drugs was achieved³¹⁸.

In 2017 Liu Yuejin declared that the situation and the drug problem in the country was stable and under control. The NNCC continued to implement the policies adopted in previous years by focusing on the repression of the drug problem in key areas, on the prevention project for young people and on community treatment, managing to reduce the relapse rate among drug addicts. Crimes of drug production have been reduced and maritime drug trafficking channels have been disrupted. In addition, the precursor chemicals management mechanism was improved, and international cooperation deepened³¹⁹.

In a written instruction released around the International Day Against Drug Abuse and Illicit Trafficking in 2018, Xi Jinping required to follow a path with Chinese characteristics in addressing drug-related problems and to successfully fight the war on drugs. Xi stressed that drug control is a matter of national security and people's well-being and, repurposing a slogan already used since the late 1990s, he stated that it is fundamental to “the rise and fall of the nation”. The main points of drug policy continued to be the strike hard approach to drug-related crimes, especially in key areas, and the importance of prevention through the education of young people and the general public³²⁰.

In 2018, the number of drug users in China slightly declined. Although China had achieved certain results in controlling drug abuse, synthetic drugs abuse was still spreading, and new changes had taken place in the phenomenon. The number of new drug users had decreased, and the growth rate of drug abusers had slowed down, but the scale was still large. As of the end of 2018, there were 2,404 million drug addicts nationwide and more than 50 percent were under 35.

Methamphetamine has become the first choice for drug abusers replacing heroin, and the number of cannabis abusers has also increased. The 56,1 percent of the registered drug users were abusing methamphetamine, while the 37 percent were abusing heroin. Less than 3 percent were abusing

³¹⁷ Office of China National Narcotics Control Commission, *2015 Report on China's Drug Situation*, February 18, 2016, http://www.nncc626.com/2016-02/18/c_128731173.htm

³¹⁸ Avinash THAROOR, “China Vows to Intensify Drug War”, *TalkingDrugs*, March 24, 2017, <https://www.talkingdrugs.org/china-vows-to-intensify-drug-war>

³¹⁹ Office of China National Narcotics Control Commission, *2017 Report on China's Drug Situation*, June 25, 2018, http://www.nncc626.com/2018-06/25/c_129900461.htm

³²⁰ CUI Jia, “Xi: War on drugs cannot be paused”, in *China Daily*, June 25, 2018, <https://www.chinadaily.com.cn/a/201806/25/WS5b30b762a3103349141dea6c.html>

ketamine (氯胺酮 *lǜ'antong*). The abuse of cannabis continues to show an upward trend. As of the end of 2018, there were 24,000 cannabis abusers across the country, an increase of 25.1 percent year-on-year. There was an increasing trend of abuse by foreigners in China. Cannabis abusers were mainly people with overseas study or work experience, and entertainment industry performers. There was a trend towards the abuse of synthetic drugs by relapsers, and the cross-abuse of mixed synthetic drugs and opioids was prominent. The new drugs were mainly used by teenagers in entertainment venues, making supervision and law enforcement more difficult³²¹.

At present, maintaining social harmony and social stability continues to remain the main goal of drug control policy. To achieve it, Xi, in a conference held in Beijing last June via video and teleconference, just before the last International Day Against Drug Abuse and Illicit Trafficking, invited Party committees and governments at various levels to adhere to the concept of people-centred development, to improve the governance system on drug control and to strengthen international cooperation³²².

Xi Jinping's last instructions for the anti-drug work are to further promote the People's War on Drugs, through the promotion of the special action "Anti-drug 2019, Two Fights and Two Controls" ("禁毒 2019 两打两控" *Jindu 2019 liang da liang kong*), the creation of "rectification and demonstration cities" (整治和示范城市 *zhengzhi he shifan chengshi*), and other counter narcotics activities.

According to the latest annual Report on China's Drug Situation published in 2020 and relating to 2019, China has achieved noteworthy results in the fight against drugs. The in-depth implementation of the youth drug prevention education projects has effectively slowed the emergence of new drug addicts, furthermore the active promotion of community-based treatment and rehabilitation projects have effectively reduced the social harm of drugs. The government has achieved positive results also thanks to the implementation of operations to combat drug manufacturing crimes, in particular of synthetic drugs, and to the innovation and improvement of the mechanism of blocking the sources and intercepting the flows of drugs. The report also highlights the problem of the spreading of online drug-related activities. The operations concentrate on cracking down on Internet drug-related illegal and criminal activities, effectively curbing the development and spread of Internet drug-related problems. The government continued to focus its drug control efforts on some key areas, continued to advance international drug control cooperation, and actively participated in international drug control issues and transnational drug enforcement actions.

³²¹ Office of China National Narcotics Control Commission, *2018 Report on China's Drug Situation*, June 17, 2019, http://www.nncc626.com/2019-06/17/c_1210161797.htm

³²² YANG Zekun, "Xi: Step up battle against illegal drugs", in *China Daily*, June 24, 2020, <https://www.chinadaily.com.cn/a/202006/24/WS5ef289b0a310834817254ff9.html>

In addition, the international cooperation system has been improved and the areas and channels of cooperation have been expanded. In particular, bilateral cooperation was conducted with the countries involved in the Belt and Road Initiative, including Myanmar, Laos, Thailand, Vietnam and Malaysia. But exchanges of information and cooperation in drug law enforcement also took place with the United States, Russia, Canada and New Zealand³²³.

Thanks to all these achievements, while the global drug situation continues to deteriorate, the situation of China's fight against drugs is progressively improving. The number of drug addicts is declining, and large-scale drug production activities are decreasing. The current number of drug users, excluding the number of people who have not been relapsed for three years of abstinence, the number of deaths and the number of departures, has fallen for two consecutive years. Although China has achieved remarkable results in reducing drug demand and has achieved certain results in tackling drug abuse, the number of abusers is still large, the concealment of drug abuse activities has increased, and the increase in new types of drugs has made it more difficult to control.

As of the end of 2019, there were 2,148 million registered drug users in China, accounting for 0,16 percent of the country's total population, which was the second consecutive year of decline. Among them, more than the 50 percent were over 35 years old. 2,533 million of drug addicts have not relapsed for three years since rehabilitation, exceeding the number of existing drug users for the first time.

The percentage of young people among registered drug users is falling, but it must be taken into account that to circumvent law enforcement investigations, drug use in private locations has increased, while it has decreased in public entertainment venues, making it more difficult for authorities to locate drug abusers. Furthermore, the use of the Internet as a channel for purchasing substances is on the rise. Since online trade is more convenient and safer, and due to the simplicity and speed of online payment, face-to-face trafficking and smuggling activities has become less and less used. Using virtual identities to connect online and trade drugs online, mobile banking is adopted. Internet payment methods such as WeChat, Alipay, etc., and the online drug trafficking model of delivering drugs through courier services has become the new normal, making it difficult to track and control.

Methamphetamine is still the most abused drug in the country, with 1,186 million abusers accounting for 55,2 percent, followed by 807.000 of heroin abusers, accounting for 37,5 percent, and 49.000 of ketamine abusers, accounting for 2,3 percent. However, the number of abusers of the three drugs have all declined. The number of marijuana abusers is 24.000 as the previous year.

The drug market is constantly developing and the number of the new types of drugs is continually increasing and this makes it difficult to identify and manage them. At present China has listed 431 kinds of drugs and an entire class of fentanyl substances. In 2019 alone, 41 new psychoactive

³²³ Ibid.

substances were detected by national laboratories. In addition, in order to attract consumers and confuse the authorities, some drug dealers continue to change their packaging forms and drugs are frequently hidden in foodstuffs such as milk tea bags, chocolates, cookies, mushrooms, coke and cigarettes.

At present Chinese drugs are mainly imported from abroad and manufactured domestically. With the decrease in domestic production and the skyrocketing drug prices, the penetration of foreign drugs into China has been intensified, quickly seizing the market, making up for the lack of demand, and replacing the dominant market position of domestic drugs. The Golden Triangle is still the main source of drugs, especially heroin, but also methamphetamine and ketamine. Smaller amounts of drugs also come from the Golden Crescent and from South America whose drug cartels continue to expand the global cocaine trafficking network.

A decrease in large-scale drug production activities has occurred. The crackdown campaigns on drug production crimes have led to a drop in the domestic production capacity. Domestic drug production has become more fragmented, small scale and simplified in the process. Although the addiction rate to methamphetamine is not increasing, the market demand is still large, and this drug is highly addictive. Furthermore, the reduction in the domestic supply of synthetic drugs such as methamphetamine and ketamine, due to the repression campaigns, has caused prices to rise. Thus, the risk of a new spread of drug manufacturing activities, encouraged by potential profits, is high.

Drug trafficking activities are still active on all the levels: domestic and overseas, online and offline. Overseas drugs are still mainly introduced to China via Yunnan, which is the main drug infiltration and transit point in the Golden Triangle, where drug trafficking groups gather³²⁴.

6.2 New trends and challenges in drug addiction treatment

As for the treatment, the modalities have remained the same, but China, even without abandoning the compulsory isolated treatment modality, is moving towards an ever-greater use of community-based treatment. After the publication of the Anti-Drug Law and the Drug Detoxification Regulation, the evolution of the treatment and rehabilitation system in China continued following the concept of people-centred and health-oriented treatment.

There has been an evolution in policies and new trends have emerged in the treatment of drug addiction. However, these changes were not accompanied by a legislative evolution.

The "National Community Drug Rehabilitation Program (2016-2020)", born from the "8.31" project, for example, provides new national guidelines for community-based treatment and rehabilitation.

³²⁴ Office of China National Narcotics Control Commission, *2019 Report on China's Drug Situation*, June 28, 2020, http://www.gov.cn/xinwen/2020-06/28/content_5522443.htm

Although it proposes many substantive rules, this normative document, jointly issued by 11 ministries and organizations including the Office of the NNCC on December 15, 2015, has a very low legislative level³²⁵. The national community rehabilitation plan was based on the Anti-Drug Law and the Drug Detoxification Regulation and aimed to further promote community-based treatment and rehabilitation work, improve the treatment system and the level of management of services for addicts, and minimize the social harm of drugs. Under the program, drug control and addiction treatment work must continue to be carried out on the basis of the concepts of rule of law, innovation of social management and mobilization of all social forces. The document supports the implementation of a treatment model that integrates physical rehabilitation, psychological recovery, reintegration into society and employment support, such as the one analysed in the case study on the Sunshine Project. Although there is no evidence of an actual correlation between the Sunshine Project and the latest national guidelines on community treatment, it is nevertheless evident that the government's drug policy has moved in a similar direction to that of the project. In fact, several similarities can be observed between the two, including first of all the "four in one" treatment and rehabilitation model, and the importance attributed to the training of a full-time staff of professional social workers and volunteers.

The plan also calls for cooperation between the various departments responsible for the management of community treatment work, the implementation at the local level of community treatment measures and the active participation of all social forces to help addicts to get rid of addiction, integrate in society and minimize social harm. The importance of a humane and people-oriented approach to treatment is reiterated. The scientific and health-oriented approach to treatment must also be observed and the treatment must be adapted to the different needs of individual drug users. Treatment services need to be targeted and a variety of rehabilitation measures used to help patients recover physically and mentally. Treatment must be adapted to local conditions by distinguishing between various situations, and treatment models that are in line with local realities must be explored in order to improve the effectiveness of the treatment work.

The plan aimed to build a comprehensive community treatment system in five years, create a team of full-time community treatment workers, fully implement various treatment measures, and steadily increase the community-based treatment implementation rate. It set a goal for each year to achieve a higher percentage of implementation of the community-based treatment system.

By 2016, all local governments at the township and urban sub-district level where drug addicts were present established a guiding group for community-based treatment and rehabilitation, and the implementation rate of community-based treatment has reached more 60 percent. In 2017, the

³²⁵ Li Shiting 李施霆 (2018), p. 120

national community-based treatment system was basically formed. Construction of medical rehabilitation institutes has progressed steadily, full-time staff has been trained, and building professional drug control and social work teams for rehabilitation have progressed. Employment support policies have actually been implemented. The implementation rate of community treatment has reached more than 70 percent. In 2018, community-based treatment work in the country has significantly improved. The team of full-time workers has been stabilized, specialized training for staff has been carried out and the building of a team of volunteers has progressed. The working mechanism of community treatment is more standardized, and the implementation rate of community treatment has reached 80 percent. The plan was to achieve a system implementation of more than 90 percent in 2019 and more than 97 percent in 2020, achieving standardization and normalization of the system nationwide, with a stable full-time team of workers and a team of social workers.

To improve the community-based treatment system, the plan highlighted the importance of establishing a leadership group in each local government, and of training full-time staff to deal with community treatment. It also recognizes the importance of developing a staff of professional social workers who make up a large part of the full-time staff. Local drug control committees must also plan to build a team of drug control and treatment volunteers, encourage the participation of all social forces, and lead the contribution of social organizations. Each community must have at least two volunteers, under the control of full-time staff. Volunteers are encouraged to be recruited mainly from former party members, former officers, former teachers, former experts, or former soldiers, but also from students. They can also be provided by social organizations such as Trade Unions, the Communist Youth League, the Women's Federation and other mass organizations. The plan also insists on assisting drug addicts in vocational training, job search and other assistance services. Local drug control committees must formulate targeted employment support policies, based on local conditions, and actively help community drug addicts resolve their difficulties and integrate into society.

A system of punishments and rewards must be established for leaders responsible for community treatment. Offices of drug control committees at all levels should gradually introduce third parties such as statistical departments and scientific research institutes to conduct an assessment of the effectiveness of community drug treatment and rehabilitation work. Leaders who have implemented the measures and achieved excellent results will receive recognition and rewards, while those who have failed implementation and caused a worsening of the drug problem will be held accountable and punished³²⁶.

³²⁶ LÜ Ailing, *National Plan for Community-Based Detoxification and Rehabilitation (2016-2020)* [in Chinese], Chinese Association of Drug Abuse Prevention and Treatment, June 4, 2018 http://www.nncc626.com/2018-06/04/c_129886310_2.htm

Although compulsory isolated treatment is still widely used in China, the community-based treatment method, according to official sources, is gradually replacing it. In 2009 in China, a year after the law was published, detention was still the main form of treatment: 82.000 people underwent community-based treatment or rehabilitation, compared to 173.000 sent to CIT centres³²⁷. According to data from the 2019 Report on China's Drug Situation, community treatment was imposed on 242.000 registered drug users in 2018, while compulsory isolated treatment was imposed on 279,000 drug users³²⁸. However, the same annual report published in 2020 reports that 220.000 drug users were sent to compulsory isolated rehabilitation centres in 2019, compared to 300.000 who had to undergo community-based treatment and rehabilitation³²⁹.

Regarding compulsory isolated treatment, China continues to support its effectiveness, and in recent years also due to the changes occurred in the types of drugs consumed, new trends in drug addiction treatment have emerged.

The population of compulsory isolated treatment centres is no longer made up predominantly of heroin addicts. The greater variety of abused drugs requires greater differentiation of treatment and innovation of methods. In 2017, 77 percent of newly identified drug abusers were synthetic drug users. In recent years, synthetic drug users make up more than 50 percent of drug addicts detained in compulsory treatment centres in China and this implies the need to adapt treatment to the conditions of new patients, which often means managing brain damages and mental disorders³³⁰.

During the first international drug addiction treatment conference of the Chinese Ministry of Justice, held in June 2019 in Yunnan province, China presented the innovations of compulsory isolated treatment. Sport-based rehabilitation has emerged among the new trends. Detainees participate in sport activities such as dynamic biking and rowing while their physical condition is monitored via electronic devices.

The Chinese government has highlighted the use in centres of new technologies and innovative methods such as the use of virtual reality in assessing the degree of drug addiction and as a correction system, and transcranial magnetic stimulation. The focus on patients' mental health was also emphasized and the centres boasted the use of more than 20 psychotherapy techniques, including sand play therapy, music therapy, motivational interviews, etc.

³²⁷ Sarah BIDDULPH, Chuanyu XIE (2011) p. 992

³²⁸ Office of China National Narcotics Control Commission, *2018 Report on China's Drug Situation*, June 17, 2019, http://www.nncc626.com/2019-06/17/c_1210161797.htm

³²⁹ Office of China National Narcotics Control Commission, *2019 Report on China's Drug Situation*, June 28, 2020, http://www.gov.cn/xinwen/2020-06/28/content_5522443.htm

³³⁰ CUI Jia, "Xi: War on drugs cannot be paused", in *China Daily*, June 25, 2018, <https://www.chinadaily.com.cn/a/201806/25/WS5b30b762a3103349141dea6c.html>

The use of traditional Chinese medicine was also mentioned among the treatment techniques. In addition, more than 85 percent of the inmates of the centres participated in professional training activities for reintegration into society³³¹.

Viroj Sumyai, former president of the International Narcotics Control Board (INCB), after visiting compulsory treatment centres in Yunnan, expressed appreciation for the organized management and use of new technologies in treatment, and, as the Global Times reports, has stated that not only the treatment is more advanced than in many other countries in the world, but it is also carried out in full respect of human rights and the interests of drug addicts.

In a 2019 interview with the Global Times Hao Wei, vice president of INCB, asserted that human rights are not violated in the centres for compulsory isolated treatment in China and states that the country remains determined to use this method of treatment, ignoring the 2013 UN appeal calling for the closure of compulsory drug addiction detention centres³³².

³³¹ WANG Daan, JIA Dongming, SHAN Zhiqiang “Study on the Application and Extension of New Techniques and Methods in Drug Treatment”, *Design Engineering*, Vol. 2020, Issue 11, 2020, pp. 564-571

³³² HU Yuwei, “Chinese drug rehab centers impress experts with high-tech solutions as global drug abuse situation worsen”, in *Global Times*, July 2, 2019, <https://www.globaltimes.cn/content/1156474.shtml>

CONCLUSIONS

The overview of the policies and legislation governing drug control in China shows that the government over time has remained firmly on the hard line towards drug crimes and continues to support the severe repression of the phenomenon, even if the anti-drug policy has also been extended to various other areas. China, relying on its experience, has not lost its determination to carry on the war on drugs. However, towards the management of drug addicts, which is a fundamental part of drug control, the attitude of the country has undoubtedly changed compared to the past.

There have been some improvements in the treatment and rehabilitation system since the publication of the Anti-Drug Law and the latest trends show China's willingness to move forward by making use of new technologies and seeking to enhance and improve community-based treatment.

In practice, however, the system has not changed, and the police still play a predominant role in the management of drug addicts. For this particular category of people, the government's approach seems to be ambivalent: on the one hand, they are a category of people to be assisted and protected. Defined by the state as patients and victims, they firstly need health assistance. Moreover, they often come from social contexts that present economic difficulties, with high unemployment rates and low levels of education, social issues that the state should take on, also in view of the government's intention to solve the problem of poverty, on the basis of the principle of people-centred society.

On the other hand, however, drug addicts continue to be considered partly guilty of their condition, and therefore punishable, especially as they constitute a threat to the maintenance of public order and social stability. China has shown on numerous occasions that it is not very tolerant of individuals who represent even a potential threat to society, and even in the case of drug addicts this results in entrusting their management to the police forces who arbitrarily dispose of the measures of detention and control of individuals, and effectively manage the entire registration, treatment and rehabilitation process. The existence of periodic deadlines within which to reach certain quotas of arrests of drug addicts also determines that the interests of local authorities clash with and prevail over principles.

It almost seems that China is torn between the need to evolve treatment towards a more humane and scientific approach, as also stated in the Anti-Drug Law, and the draconian measures to maintain public order and social stability, a condition necessary for development and, together with it, a fundamental principle of contemporary Chinese society.

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GLOSSARY

English	Chinese	Pinyin
All-round control	综合治理	<i>zonghe zhili</i>
Anti-drug propaganda and education	禁毒宣传教育	<i>jindu xuanchuan jiaoyu</i>
Aphrodisiac	春药	<i>chunyao</i>
Bail	取保候审	<i>qubao houshen</i>
Cocaine	古柯碱, 可卡因	<i>gukejian, kekayin</i>
Community-based rehabilitation	社区康复	<i>shequ kangfu</i>
Community-based treatment	社区戒毒	<i>shequ jiedu</i>
Compulsory isolated treatment	强制隔离戒毒	<i>qiangzhi geli jiedu</i>
Drug addiction	吸毒成瘾 (毒瘾)	<i>xidu chengyin (duyin)</i>
Drug addict	吸毒成瘾人员	<i>xidu chengyin ren yuan</i>
Drug control	毒品管制	<i>dupin guanzhi</i>
Drug prohibition	禁毒	<i>jindu</i>
Drug rehabilitation measures	戒毒措施	<i>jiedu cuoshi</i>
Drug use	吸毒	<i>xidu</i>
Drug user	吸毒人员	<i>xidu ren yuan</i>
Drug-free community	无毒社区	<i>wudu shequ</i>
Dynamic management	动态控制	<i>dongtai kongzhi</i>
Ecstasy	摇头丸	<i>yaotouwan</i>
Ephedrine	麻黄碱	<i>mahuangjian</i>
Fentanyl	芬太尼	<i>fentaini</i>
Five Anti	五反	<i>Wu Fan</i>
Four prohibitions simultaneously (of planting, of manufacturing, of trafficking, of using)	四禁并举 (禁种、禁制、禁贩、禁吸)	<i>sijin bingju (jinzhong, jinzhi, jinfan, jinxi)</i>
Harmonious Socialist Society	社会主义和谐社会	<i>Shehui Zhuyi Hexie Shehui</i>
Heroin	白面儿, 海洛因	<i>baimianr, hailuoyin</i>
International cooperation in drug control	禁毒国际合作	<i>jindu guoji hezuo</i>
Joint liability of the whole society	全社会的共同责任	<i>quan shehui de gongtong zeren</i>
Ketamine	氯胺酮	<i>lǜ'antong</i>
Madak	鸦片烟	<i>yapianyan</i>
Maintaining social order	维护社会秩序	<i>weihu shehui zhixu</i>
Marijuana	大麻	<i>dama</i>
Medicine	药	<i>yao</i>
Methadone Maintenance Therapy	美沙酮维持疗法	<i>Meishatong Weichi Liaofa</i>
Methamphetamine (ice)	甲基苯丙胺 (冰毒)	<i>jiaji benbing'an (bingdu)</i>

Morphine	吗啡	<i>mafei</i>
Needles Exchange Program	针头交换计划	<i>Zhentou Jiaohuan Jihua</i>
New life factories	新生工厂	<i>xinsheng gongchang</i>
Opium	鸦片	<i>yapian</i>
Opium addicts	烟民	<i>yan min</i>
People's War on Drugs	禁毒人民战争	<i>Jindu Renmin Zhanzheng</i>
Precursor chemical	易制毒化学品	<i>yizhiduhuaxuepin</i>
Priority of prevention	预防为主	<i>yufang wei zhu</i>
Re-education through labour	劳教	<i>laojiao</i>
Residential surveillance	监视居住	<i>jianzhi juzhu</i>
Severe addiction	吸毒成瘾严重	<i>xidu chengyin yanzhong</i>
Severe and swift punishment	从重从快惩罚	<i>congzhong congkuai chengfa</i>
Sick man of Asia	东亚病夫	<i>Dongya bingfu</i>
Six Evils	六害	<i>Liu Hai</i>
Six-year drug prohibition plan	六年禁烟	<i>Liu Nian Jinyan</i>
Social help and education (system)	帮教	<i>bangjiao</i>
Social management innovation	社会管理创新	<i>shehui guanli chuangxin</i>
Specialized campaigns	专项斗争	<i>zhuanxiang douzheng</i>
Spiritual emptiness	精神空虚	<i>jingshen kongxu</i>
Spiritual pollution	精神污染	<i>jingshen wuran</i>
State clinic	戒烟所	<i>jie yan suo</i>
Strike Hard	严打	<i>Yanda</i>
Sunshine Project	阳光工程	<i>Yangguang Gongcheng</i>
Three Anti	三 反	<i>San Fan</i>
Tobacco	烟	<i>yan</i>
Voluntary treatment	自愿戒毒	<i>ziyuan jiedu</i>

Selection of national drug control laws, regulations and other legislative documents in China since 1950:

Year	English	Chinese
1950	General Order for Opium Suppression	关于严禁鸦片烟毒的通令 <i>Guanyu Yanjin Yopian Yandu de Tongling</i>
1952	Directive on the Eradication of the Drug Epidemic	关于肃清毒品流行的指示 <i>Guanyu Suqing Dupin Liuxiang de Zhishi</i>
1963	Notice of the Central Committee on Prohibition of Opium and Morphine	中央关于严禁鸦片、吗啡毒害的通知 <i>Zhongyang Guanyu Yanjin Yopian, Mafei Duhai de Tongzhi</i>
1973	Notice on the Prohibition of Illegally Cultivating Opium Poppy, and Trafficking and Smoking Opium and Other Drugs	关于严禁私种罂粟和贩卖、吸食鸦片等毒品的通知 <i>Guanyu Yanjin Sizhong Yingsu he Fanmai, Xishi Yopian Deng Dupin de Tongzhi</i>
1978	Regulations on the Administration of Narcotic Drugs	麻醉药品管理条例 <i>Mazui Yaopin Guanli Tiaoli</i>
1979	Criminal Law of the PRC	中华人民共和国刑法 <i>Zhonghua Renmin Gongheguo Xingfa</i> . Available at: http://www.lawinfochina.com/display.aspx?id=3&lib=law&SearchKeyword=criminal%20law&SearchCKeyword=
1981	Notice Restating the Strict Prohibition of Opium and Drug Taking issued by the State Council	国务院关于重申严禁鸦片烟毒的通知 <i>Guowuyuan Guanyu Chongshen Yanjin Yopian Yandu de Tongzhi</i>
1982	Urgent Directive on the Problem of Complete Prohibition of Opium	关于禁绝鸦片烟毒问题的紧急指示 <i>Guanyu Jinjue Yopian Yandu Wenti de Jinji Zhishi</i>
	Decision on Severely Punishing Those Who Disturb the Economy	关于严惩严重破坏经济的罪犯的决定 <i>Guanyu Yancheng Yanzhong Pohuai Jingji de Zuifan de Jueding</i>
1984	Pharmaceutical Administration Law of the People's Republic of China	中华人民共和国药品管理法 <i>Zhonghua Renmin Gongheguo Yaopin Guanli Fa</i>
1986	PRC Security Administrative Punishment Regulation (SAPR)	中华人民共和国治安管理处罚条例 <i>Zhonghua Renmin Gongheguo Zhi'an Guanli Chufa Tiaoli</i>
1987	Customs Law of the People's Republic of China	中华人民共和国海关法 <i>Zhonghua Renmin Gongheguo Haiguan Fa</i>
	Measures for the Control on Narcotic Drugs	麻醉药品管理办法 <i>Mazui Yaopin Guanli Banfa</i>
	Supreme Court's Response on Sentencing Standards for Imposing the Death Penalty on Narcotics Traffickers	最高人民法院关于《贩卖毒品死刑案件的量刑标准》的答复 <i>Zuigao Renmin Fanyuan Guanyu "Fanmai Dupin Sixing Anjian de Liangxing Biaozhun" de Dafu</i>

1988	Supplementary Provisions on the Punishment of Smuggling Crimes	关于惩治走私罪的补充规定 <i>Guanyu Chengzhi Zousi Zui de Buchong Guiding</i>
	Measures for the Control on Psychotropic Drugs	精神药品管理办法 <i>Jingshen Yaopin Guanli Banfa</i>
1990	Decision on Drug Control	关于禁毒的决定 <i>Guanyu Jindu de Jueding</i> . Available at: http://www.lawinfochina.com/display.aspx?id=873&lib=law&SearchKeyword=&SearchCKeyword=%b9%d8%d3%da%bd%fb%b6%be%b5%c4%be%f6%b6%a8
1991	Law of the People's Republic of China on the Protection of Minors	中华人民共和国未成年人保护法 <i>Zhonghua Renmin Gongheguo Weicheng Nianren Baohu Fa</i>
	Notice by the SPC on authorizing People's High Court in Yunnan Province to approve death sentences in certain drug-related cases	最高人民法院关于授权云南省高级人民法院核准部分毒品犯罪死刑案件的通知 <i>Zuigao Renmin Fayuan Guanyu Shouquan Yunnan Sheng Gaoji Renmin Fayuan Hezhun Bufen Dupin Fanzui Sixing Anjian de Tongzhi</i>
1993	Notice by the SPC on authorizing People's High Court in Guangdong Province to approve death sentences in certain drug-related cases	最高人民法院关于授权广东省高级人民法院核准部分毒品犯罪死刑案件的通知 <i>Zuigao Renmin Fayuan Guanyu Shouquan Guangdong Sheng Gaoji Renmin Fayuan Hezhun Bufen Dupin Fanzui Sixing Anjian de Tongzhi</i>
1995	Measures for Compulsory Drug Rehabilitation	强制戒毒办法 <i>Qiangzhi Jiedu Banfa</i>
	Procedures for the Administration of Pharmaceuticals for Drug Addiction Treatment	戒毒药品管理办法 <i>Jiedu Yaopin Guanli Banfa</i>
1997	Criminal Law of the PRC (Revised)	中华人民共和国刑法 <i>Zhonghua Renmin Gongheguo Xingfa</i> . Available at: http://www.asianlii.org/cn/legis/cen/laws/clotproc361/
1998	Notice on Further Strengthening the Control of Ephedrine	关于进一步加强麻黄碱管理的通知 <i>Guanyu Jinyibu Jiaqiang Mahuang jian Guanli de Tongzhi</i>
1999	Regulations on the Administration of Entertainment Venues	娱乐场所管理条例 <i>Yule Changsuo Guanli Tiaoli</i>
2000	Notice on Strengthening the Work of Registration of Drug Users	公安部关于加强吸毒人员登记工作的通知 <i>Gong'an Bu Guanyu Jiaqiang Xidu Renyuan Dengji Gongzuo de Tongzhi</i>
	White Paper on Narcotics Control	国务院新闻办公室 <i>Guowuyuan Xinwen Bangongshi</i> . Available at: http://www.china.org.cn/e-white/1/index.htm

	SPC Interpretation on Issues Related to the Standards for Conviction and Sentencing in Drug Cases	最高人民法院关于审理毒品案件定罪量刑标准有关问题的解释 <i>Zuigao Renmin Fayuan Guanyu Shenli Dupin Anjian Gingzui Liangxing Biaozhun Youguan Wenti de Jieshi</i>
2005	Administrative Regulations on Narcotic and Psychotropic Drugs	麻醉药品和精神药品管理条例 <i>Mazui Yaopin he Jingshen Yaopin Guanli Tiaoli</i> . Available at: http://www.lawinfochina.com/display.aspx?id=4497&lib=law&SearchKeyword=psychotropic&SearchCKeyword=
	Regulations on the Control of Precursor Chemicals	易制毒化学品管理条例 <i>Yizhidu Huaxuepin Guanli Tiaoli</i>
	Temporary Management of Export of Precursor Chemicals to Specific Countries/Regions	向特定国家/地区出口易制毒化学品暂行管理规定 <i>Xiang Teding Guojia/Diqu Chukou Yizhidu Huaxuepin Zanxing Guanli Guiding</i>
2006	PRC Public Security Administration Punishment Law (SAPL)	中华人民共和国治安管理处罚法 <i>Zhonghua Renmin Gongheguo Zhi'an Guanli Chufa Fa</i> . Available at: http://www.lawinfochina.com/display.aspx?lib=law&id=4549&CGid
	Regulations on the Administration of Entertainment Venues (Revised)	娱乐场所管理条例 <i>Yule Changsuo Guanli Tiaoli</i>
2008	The Narcotics Control Law of the PRC	中华人民共和国禁毒法 <i>Zhonghua Renmin Gongheguo Jindu Fa</i> . Available at: http://www.lawinfochina.com/display.aspx?id=6604&lib=law
2011	Drug Detoxification Regulation	戒毒条例 <i>Jiedu Tiaoli</i> . Available at: http://www.lawinfochina.com/display.aspx?id=8941&lib=law&EncodingName=big5#
	Measures for the Determination on Drug Addiction	吸毒成瘾认定办法 <i>Xidu Chengyin Rending Banfa</i> Available at: http://www.gov.cn/gzdt/2011-02/01/content_1797148.htm
2015	National Community Drug Rehabilitation Program (2016 — 2020)	全国社区戒毒社区康复工作的规划 (2016—2020 年) <i>Quanguoshequ Jiedu Shequ Kangfu Gongzuo de Guihua (2016-2020 nian)</i> . Available at: http://www.nncc626.com/2018-06/04/c_129886310_2.htm
2016	Measures for the Determination on Drug Addiction (Amended)	吸毒成瘾认定办法 <i>Xidu Chengyin Rending Banfa</i> . Available at: http://www.gov.cn/gongbao/content/2017/content_5213189.htm

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