

# Pre-trial Detention Houses and Protection of Detainees' Rights in China

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**Abstract:** Detainees' rights in pre-trial detention houses are a means of assessing a country's human rights protection. As a legal facility for carrying out criminal detention, a pre-trial detention house should remain neutral and safeguard detainees' substantive and procedural rights. It should be an important base for the country to respect and protect human rights. At the macro level, protecting detainees' rights comprises two aspects: 1) procedural rights, regarding which the principle of presumption of innocence should be applied; and 2) detainee treatment, regarding which the principle of socialization should be applied. At the current stage of China's rights protection situation, China should improve detainees' rights, such as the right to have an individual bed, the rights to health care and religious freedom, rules regarding the use of leg-irons, and transparency and independent monitoring mechanisms.

**Key Words:** detention house; detainee; human rights

In the Chinese legal context, "detainees" usually refers to suspects and defendants who are deprived of personal freedom and who are arrested or detained according to the provisions of the Criminal Procedural Law. A detention house is the one and only legal facility for custody.<sup>1</sup> Considering the current national situation in which pre-trial detention is normal and having a guarantor while pending trial is the exception, the number of detainees in detention houses is rather large. In addition, for a rather long period, detention houses have been strictly isolated. Therefore, the human rights protection in detention houses has long been a concern for people at home and abroad. One of the core aspects of the rule of law is to constrain public power and protect private rights. Related to protection of the rights of the accused, a weak group in the criminal justice system, the legal culture of detention houses has become an important window on the legal culture of the whole state. The situation of detainees' rights in pre-trial detention houses has also become a means of assessing a country's human rights protection, thus attracting more and more attention.

### I. An Overview of Detention Houses

Detention houses are the organs for carrying out detention related to criminal litigation. They mainly implement two compulsory measures: detention and arrest. To reduce judicial cost, detention houses are also empowered by the Criminal Law to carry out fixed term imprisonment of individuals with remaining terms of less than three months.<sup>2</sup> The Regulations on Detention Houses stipulate that detention houses should be established at the county or district level and governed by public security organs. Considering the number of counties and districts in China, there are over 2,700 detention houses in total. According to statistics from

recent years, the number of people detained in all detention houses averages about 1 million per day, with a yearly average of 3 million. Being responsible for detention houses, public security organs have established prison management departments that manage detention houses. Altogether, there are 100,000 prison guards.

The statutory basis for running detention houses is mainly the Regulations on Detention Houses promulgated by the State Council in 1990. During the amendment of the Criminal Law in 2012, plenty of provisions on detention houses were included.<sup>3</sup> It clarified that detention houses could be independent litigation participants as with public security organs. Important litigation functions were assigned to detention houses such as arranging meetings with lawyers and preventing extraction of confessions by torture. But due to the nature of criminal procedure law, issues about the protection of detainees' rights and management, etc. could not be included. The main statute concerning running detention houses is actually the "antique" Regulations on Detention Houses. As detention places, progress on the constitutionality of detention houses lags far behind that of prisons. Early in 1994, prisons began to carry out law enforcement activities according to the Prison Law issued by the legislative branch, which was amended and improved in 2012. The shortage of and lag in statutes and legislation has become the greatest barrier to progress in the constitutionality of detention houses. Obviously, decision-makers have noticed this problem. In October 2013, the Standing Committee of the National People's Congress published a legislative plan for the following five years. A law on detention houses along with 67 other laws was included in the plan.<sup>4</sup>

From the perspective of its legal nature, as the legal place for carrying out criminal detention, the main tasks for detention houses are carrying out criminal detention, guaranteeing the smooth progress of criminal procedures and equally protecting the rights (powers) of both parties. Serving as an alternative place for carrying out criminal punishment is a subsidiary task.<sup>5</sup> "To guarantee the smooth progress of criminal procedures," the detention house has to be a neutral detention place. On the one hand, it has to cooperate with the law enforcement functions of the prosecutor; on the other hand, it has to guarantee the defendant's rights of action, in order to ensure the safe custody of detainees and respect and guard their substantive rights as well.

## **II. A Macro View of Human Rights Protection in Detention Houses**

Detention houses are the places for carrying out criminal detention, the nature of which is to deprive or restrict personal freedom and ancillary rights of detainees. During the amendment of the Constitution in 2004, the provision that "the state values and safeguards human rights" was added to Article 33. This principle was reiterated in the legislative objectives in Article 2 during the amendment of the Criminal Law in 2012 and further developed in many specific articles and clauses. Protection of detainees' human rights in detention houses is a means of assessing the level of human rights protection in the criminal justice activities of a certain state and reflects the legal culture of a country. The management of pre-trial detainees by detention houses is in essence a series of interferences of citizens' basic rights, including personal rights, property rights and the right to privacy. As the main place for criminal suspects and defendants to await trial, such management inevitably involves the exercise and safeguard of the right to action. The results of various litigation procedures are all shown in detention houses. Thus, the detention house is an important place for safeguarding detainees' substantive and procedural rights and an important base for the country to respect and protect human rights. Based on this consensus, both international society and the Chinese government pay great attention to the issue

of human rights protection. On the international level, the United Nation has promulgated a series of international conventions and rules to safeguard the rights of detainees, including Article 10 of the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Standard Minimum Rules for the Treatment of Prisoners, and Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, etc. On the national level, since 2009 the Chinese Government has released two National Human Rights Action Plans that highly emphasize "the rights of detainees" as an important component of the civil and political rights of citizens.<sup>6</sup>

Since the exposure of the Hide and Seek Event in Yunnan, during the reform of the detention house system dominated by the Ministry of Public Security, many new mechanisms for safeguarding detainees' rights have been adopted. "Taking guaranteeing detainees' legal rights as the basic starting point and goal of supervision by public security organs" has been highlighted,<sup>7</sup> thus spreading and promoting the acceptance and implementation of the human rights concept in the work of detention houses. The safeguard mechanisms are as follows: First, gradually realize the right of prisoners to an individual bed in order to prevent bullying and improve detainees' living environment. Second, improve the physical examination mechanism for new detainees. Physical examination reports by hospitals must be submitted when criminal suspects and defendants are admitted to a detention house. In addition, physical examinations must be made after interrogation to prevent extraction of confessions by torture. Third, mechanism for informing prisoners of their rights and obligations. After admission to the detention center, all detainees must be informed orally and in writing of their rights and obligations within a prescribed period so they can become familiar with their situation during detention. Fourth, in order to guarantee the physical rights of detainees, interrogation shouldn't affect the daily diet and necessary rest of detainees. Fifth, forced labor is forbidden. Labor activities must be carried out on the premise of willingness and without influencing detainees' physical health and supervision safety. Sixth, detainees with serious illness, those under long-term detention and untried juveniles are allowed to meet with their families via one-way video.<sup>8</sup>

During the last five years, the reform and improvement of human rights protection through the above policies has exerted great influence in China, with its long tradition of "suppression over protection" and "substance over procedure." The only "progress in context," i.e., the limited exploration of human rights protection in detention houses, has already received high approval from political decision-makers. Since the 18th Party Congress, political and legislative leaders have pointed out that the development direction for detention houses during the new period is to "make efforts to push prison supervision by Chinese public organs into the advanced ranks of the world" and serve as "a window to illustrate the legal culture of China."<sup>9</sup> Some of these policies are beyond the current development stage of Chinese detention houses. This situation serves as a strong political environment for the continuous development of human rights protection in detention houses.

The doctrine of respecting and safeguarding human rights applies to all citizens. To safeguard and guarantee all people's fundamental human rights and the dignity that makes a person a person, including the human rights and dignity of detainees, is a constitutional duty of a state. In this sense, it's not hard to understand why all criminal suspects and defendants—and even convicted criminals—are worthy of basic and statutory humanitarian treatment. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent

dignity of the human person.<sup>10</sup> Except for those legal rights rescinded by statute in written form, detainees still enjoy a wide range of human rights, which is the basic requirement of the legal reservation principle and the fundamental principle of human rights protection.

From the perspective that detainees are a special group, the respect and safeguard of their human rights should emphasize two other special principles, that is, the principle of presumption of innocence and the principle of socialization.

For pre-trial detainees, suspects and defendants, the principle of presumption of innocence is a basic principle related to rights protection and rights reduction.<sup>11</sup> As a basic principle for realizing an impartial trial in criminal actions, the main effective scope of the principle of presumption of innocence is the process of criminal action. In particular, it first serves as a guide for the burden of proof, which has no direct guidance for the protection of the rights of persons in custody. Thus, the realization of its guidance function is indirect. After two amendments in 1996 and 2012, all provisions and rules on the principle of presumption of innocence have been established. Together, Article 12, Article 49, Article 50 and Article 195(3) have completely fulfilled the requirements of the principle of presumption of innocence.<sup>12</sup> As a value judgment but not a fact judgment, the principle of presumption of innocence requires making a series of rules regarding proof and rights disposition that assume the innocence of the accused. As a detention place, the detention house itself is a place impartial to both parties. Rules about the principle of presumption of innocence in the Criminal Procedure Law and other statutes should get more respect. Most of these rules are about trials and actions but not the treatment of detainees, including a series of rules guaranteeing detainees' rights in the litigation process such as addressing, meeting, communication and interrogation, etc., which should be strictly followed by detention houses. As for the treatment of detainees, the assertions about fundamental rights including physical rights, personality dignity, etc. in the Constitution are sufficient to serve as the basis for detainees' human rights protection in legislation and the supervision of detention houses in the future.

The principle of socialization requires consistency between detention treatment and normal standards of society; the life of detainees should be as similar as possible to their life in society.<sup>13</sup> The underlying theory is that the ultimate goal of detention and criminal punishment is the resocialization of the accused. Detention and criminal punishment are only means<sup>14</sup> of depriving people of personal freedom but not the ultimate goal.<sup>15</sup> According to this principle, detention places should provide conditions to prepare detainees for their return to society. At the same time, social services should be fully utilized and cooperation with social organizations should be enhanced.<sup>16</sup> Compared with the principle of presumption of innocence, which pays more attention to safeguarding detainees' rights to action, the principle of socialization is more helpful in guarding fundamental rights in terms of treatment. Detention houses are not only places for carrying out detention but also places for living. Proposing and advocating the principle of socialization provides a better view for the arrangement of living conditions of persons in custody. According to the principle of human dignity of the Constitution, detainees possess the basic rights of citizens. Except for the rights legally rescinded due to detention, detainees should be treated the same as a normal person in society. Their treatment in terms of diet, medical care, entertainment and family life, etc. should be the same as their life before detention or as similar as possible. This is not only to enforce the principle of human dignity in the Constitution, but is a necessary requirement of the ultimate purpose of detention and imprisonment. Regardless whether one is

discussing pre-trial detention or after-trial imprisonment, the ultimate goal for detainees is to return to society. The deprivation of freedom and absolute isolation from society is an excessive punishment and is beyond the original intention of the law. Such a situation can easily trigger recidivism and violates the basic aim of criminal punishment.

The introduction of the principle of socialization in human rights protection is sure to arouse public suspicion, which is not difficult to find in past studies in the area of penology. The theory of "socialized punishment" was once put forward in prisons. This theory called for homogeneity of punishment and social activities. Except for detainees being in custody in prison, their other treatment should be the same as for those in society.<sup>17</sup> However, there is always a "final barrier" to this theory. That is, for society or those citizens without wrong to accept the reform of prison punishment, and accept the socialization of punishment or the treatment of prisoners, there is always a premise. No matter how reform is carried out, punishment should not be totally homogeneous with other social acts; the treatment of those in prison should never be the same as for normal citizens, but should be below the normal standard.<sup>18</sup> Such ideas widely exist in the thinking of Chinese people and largely limit the improvement of human rights protection for detainees. Thus, the implementation of the principle of socialization should fully consider the current development stage of Chinese society and regional differences in the economy and society. Social conditions should be consistent with those of the place where the detention house is located; and the socialization level should be consistent with the developmental progress of society in that area.

### **III. A Micro View of Detainees' Human Rights Protection**

From a micro view, as the physical site and living place of detainees, detention houses are places that reflect every aspect of basic rights and treatment. All the rights and liberties implying humanity and human dignity should be fully reflected in detention houses. Although specific rules seem trivial, they result from the objective rule of the constitutionality of detention houses. From a micro view of rights protection, based on a review of international rules about detainees' rights protection and an examination of the current situation of human rights protection in detention houses in China, the author concludes that the following rights need further study and promotion.

#### **A. Accommodation of Detainees**

The accommodation of detainees should follow a bedding rule, that is, one bed for one person. It is a basic requirement of international human rights standards.<sup>19</sup> So far, current statutes have never provided a clear standard about the accommodation conditions of detainees. Normative documents released by the competent authority, the Ministry of Public Security, are mainly quantity requirements regarding living areas or usage. For example, Article 27 of the Regulations on the Implementation of the Regulations of Detention Houses released by the Ministry of Public Security stipulates that prisoners in jail should have no less than two square meters. Article 7 of the Rating Methods for Detention Houses stipulates that one of the requirements for the standardized construction of detention houses is that the average usable area for each detainee should be no less than two square meters. In 2000, the Ministry of Housing and Urban-Rural Development and the Ministry of Public Security jointly released the Design Code for Detention Houses. In the accommodation part, it

stipulated that the bed in an ordinary jail is a wide bed for 8 to 15 persons with an average area of no less than 2.6 square meters. Thus, in practice, most detention houses are constructed to the above standards. The accommodation for detainees is a wide bed for a number of persons, not one bed for one person, which is in sharp contrast with the convicted who have one bed for one person. A wide bed is obviously inconvenient for protecting detainees' rights to privacy, rest, bodily integrity and other rights and is also likely to encourage prison bullies. To improve the living conditions of detainees, in April 2010, the Ministry of Public Security put forward a reform for bedding in newly built, rebuilt and extension detention houses.<sup>20</sup> Since it is impossible for many detention houses in use to be rebuilt in a short period, it will still take a while to achieve this reform goal. Yet this shouldn't influence the clear and detailed rule that the accommodation of detainees is a fundamental right and it is a governmental duty to guarantee one bed for one detainee.<sup>21</sup>

## **B. Communication with the Outside**

The Criminal Procedure Law only allows detainees to meet with their lawyers during the pre-trial stage. As for meeting with families, there are no express provisions for this. Article 28 of the Regulations on Detention Houses stipulates: "During custody, with the agreement of the investigative authority and the permission of public security organs, detainees are allowed to communicate and meet with relatives." However, this has never been applied throughout years of practice. Before trial, detainees are usually deprived of the opportunity to meet with their relatives. The first meeting after detention is usually at the hearing of first instance. Such months long or even years long separation from families is a severe infringement of detainees' human rights and does huge harm to human values and humanity. International conventions also emphasize that during the pre-trial period detainees should never be deprived of the right of communication under any circumstances, including the right to communicate with their family.<sup>22</sup> Collusion confessions due to communication with families or other obstructions of justice could serve as exceptions that support restricting the right to communication with families, but should never be a normal state. Besides meeting and communicating with families, the right to communicate with the outside should also include the right to make an immediate free call or collect call to connect with the outside after detention.

Article 92 of the Detention House Law of the People's Republic of China (Exposure Draft) drafted by the Ministry of Public Security stipulates that "during the investigation period, the meeting and communication of suspects with relatives and guardians should receive the permission of the authority of the case." Based on this, there would be no need to get permission to meet with families during the period of transfer for examination and prosecution and the period of hearing; this would become a right of detainees. At present, there are still some deficiencies in the draft. First, during the investigation period, for detainees to meet with their families, approval is a rule and agreement is an exception. The nature of such a right is not clear and is overly affected by public power. The right to communicate with families and the right of family life are undisputed legal values of human and personal dignity. In this sense, Principle 15 of the UN Principles for the Protection of All Persons under Any Form of Detention or Imprisonment requires that, notwithstanding the exceptions to maintaining safety and good order, communication of the detained or imprisoned persons with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days. The expression of a matter of days means it's no more than a week, while, international precedents show that it's

usually less than five days, sometimes as short as two days. Compared with the international standards above, current practice in China and the Detention House Law being drafted still lag far behind.

### **C. Right to Health and Health Care of Detainees**

The Regulations of Detention Houses and Implementation Regulations released in the 1990s made a preliminary rule regarding the health and health care of detainees. Since the beginning of this century, the Ministry of Public Security has made a series of new rules, which further improve the protection of the rights of physical health and health care for detainees. At admission, five regular physical tests must be done including blood pressure, routine blood test, electrocardiogram, ultrasound and chest radiography. After admission, a personal health file will be established; resident physicians will make rounds twice a day; every six months there will be a physical examination, etc.<sup>23</sup> In order to improve the level of health care, detention houses are cooperating with local health departments. Detention houses provide space and guarantee security while outside medical institutions provide medical services.<sup>24</sup> Such a reform lives up to the principle of socialization in human rights protection. Through medical insurance, purchasing social services and other measures, detainees' rights to health and health care have been highly improved.<sup>25</sup>

It is certain that the socialization of medical care in detention houses will bring a new opportunity for the development of human rights protection. Outside medical professionals come to prisons to provide independent and impartial medical care, which helps to strengthen supervision and safeguard detainees' right to health. The physical condition of detainees will be objectively recorded; detailed suggestions will be given regarding detainees' living style, food and drink, sanitary conditions, clothing and bedding, use of confinement and leg-irons, etc. In this way, the right to life and health can be fully realized. Besides providing medical care, independent medical professionals should also play a further role in the supervision of detainees' human rights protection. Detainees should have the right to make an appointment with resident physicians to report or make a record of illegal acts infringing on their right to health.

### **D. Physical Rights and the Use of Leg-irons**

Article 17 of Regulations of Detention Houses stipulates that "those on whom the death sentence has been imposed but hasn't been carried out must wear mandatory instruments. For those who are likely to be violent, engage in rebellion, escape or commit suicide, mandatory instruments may use with the permission of the director of the detention house. Mandatory instruments may be used first but must later be reported to the director and must be removed without delay after the elimination of emergency." Article 20 of the Regulations on the Implementation of the Regulations of Detention Houses released by the Ministry of Public Security stipulates that "the mandatory instruments that detention houses use include handcuffs, leg-irons and ropes. Ropes can only be used in the pursuit and capture of suspects or defendants or in the execution of the death sentence. Except for prisoners under the death sentence, handcuffs and leg-irons should be used no longer than 15 days. The duration can be prolonged with the permission of the director of the authoritative public security bureau under special circumstances. Prison policemen should enhance education for detainees in handcuffs and leg-irons, which should be removed immediately at the elimination of danger." In 2010, the Ministry of Public Security also said that detention houses may use standard police restraint straps. In cases where the shortage of mandatory instruments might cause danger, with the permission of the director of detention houses, detainees may be temporarily strapped to the jail bed with leg-irons or ankle restraint straps.

According to the rules mentioned above, mandatory instruments that may be used are limited to only four standard restraint instruments, that is, handcuffs, leg-irons, ropes and police restraint straps. Self-made mandatory instruments and other police mandatory instruments are not allowed. For prisoners under the death sentence, mandatory instruments such as leg-irons should always be used after the verdict of first instance until the death sentence is carried out. Compared with international standards of human rights, the rules and practices above should be improved in two aspects. One is that leg-irons shouldn't be used as a kind of legal restraint instrument. Article 33 of the Standard Minimum Rules for the Treatment of Prisoners clearly forbids chains and irons to be used as restraints. Since soft restraints introduced by detention houses in recent years are sufficient to achieve the purpose, leg-irons should be banned in accordance with UN conventions. Second, the use of various restraints for all prisoners under the death sentence during the whole process severely violates the principle of proportionality and blurs the distinction between the deprivation of the right to life and the deprivation of the right to individual liberty, which is also against the principle of the presumption of innocence and should be adjusted. Restraints should only be used temporarily and as an exception when prisoners are likely to commit suicide, engage in self-mutilation or pose other physical dangers.

#### **E. Freedom of Religion**

International conventions about the treatment of detainees clearly protect detainees' freedom of religion. Every prisoner shall be allowed to satisfy the needs of his religious life in three ways: attending services provided at the institution, having in his possession books of religious observance and instruction in his denomination.<sup>26</sup> Although Article 36 of the Constitution of China makes a clear stipulation about citizens' freedom of religion, the constitutionality of religious affairs proceeds rather slowly. Research on safeguarding the freedom of religion in the criminal justice field is rather limited. Together with the deficiency in related statutes, it still lags far behind the demands of prison management practices. Detainees are usually allowed to maintain their religious beliefs and read religious books in detention houses according to a normative document issued by the Ministry of Justice in 2002, but are not allowed to organize religious activities, set up religious places, preach or advocate one's religion or be provided with religious personnel.<sup>27</sup> At present, the key to this theory is distinguishing religious belief from religious activities, or distinguishing the right of internal spiritual freedom from the right of external spiritual freedom.<sup>28</sup> The former is to be protected while the latter is to be strictly restricted. Yet according to the principle of socialization and the principle of presumption of innocence in the protection of detainees' human rights, constitutional religious freedom should never be incidentally rescinded with the deprivation of physical freedom, but can only be restricted by explicit statutes in the specific situations set out in Paragraphs 2 to 4, Article 36 of the Constitution.<sup>29</sup> Unless it falls under the exceptions in the Constitution or other statutes, detention houses should provide religious personnel and organize religious ceremonies for detainees, or even establish religious places when necessary to provide convenience to detainees.



## **F. Remedies**

"Ubi jus ibi remedium." Due to limitations on detainees' physical freedom and their isolation from society, it is difficult for them to find legal remedy if their rights are violated. Therefore, a special mechanism should be established to protect their rights. New trends have developed in recent years to increase remedies for detainees. These include: enhanced publicity in society about related issues, supervision by impartial third parties, and strengthening of complaint handling mechanisms to handle complaints by detainees who feel their rights have been infringed. The Optional Protocol for the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>30</sup> passed in 2002 appeals to contracting states to establish independent inspection systems for detention places. Under such systems, people would conduct random, surprise visits to detention places to enhance the prevention of torture and inhumane treatment.<sup>31</sup> Under such detention inspection systems, inspection institutions established by the state or inspectors who are ordinary citizens can enter all detention places at any time without prior notice to check on detention conditions and the environment and talk randomly and privately with detainees, thus improving rights protection for detainees and preventing unlawful acts that infringe on human rights. In addition, in order to solve the current problem of "dare not complain, unwilling to complain and no use to complain," it is necessary to explore more efficient, confidential and jointly organized complaint handling mechanisms. The good news is that authoritative departments of detention houses and prison management and supervision departments have carried out practical exploration of the two types of remedies above and have gotten some experience.<sup>32</sup> Of course, there is still a long way to go before the Optional Protocol for United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is approved. This situation calls for more practical action and theoretical study.<sup>33</sup>

## **Reference**

1. Both Article 83 and Article 91 of the Criminal Law Code of PRC stipulate that suspects or defendants arrested or detained should be put in custody in a detention house. Before the amendment of the Criminal Law in 2012, Article 2 of the Regulations of the People's Republic of China on Detention Houses (hereinafter, Regulations on Detention Houses) promulgated by the State Council had similar provisions.
2. See Article 253 of the Criminal Law. The legal expression, "shall be executed by . . . Instead," illustrates that carrying out sentences is temporary and an extra function of detention houses. According to the same article, criminal detention shall be carried out by a public security organ. According to the Notice on the Ban of Some Functions of Custody Houses (MPS Notice No.[2005]96) released by the Ministry of Public Security (MPS) on the afternoon of Dec. 27, 2005, custody houses should be gradually abandoned beginning in the first half of 2006. Persons in custody should be transferred to detention houses to complete their sentences. It should be noted that such an act was never empowered by the Criminal Law. Thus, it is not clear whether it's legal for the MPS to adjust detention places through notice.
3. In the Criminal Law of 1979 and the Criminal Law of 1996, "detention house" only showed up once in each. However, in the Criminal Law amended in 2012, the same term shows up 10 times in eight articles, i.e., Article 37, Article 83, Article 91, Article 116, Article 253, Article 254, Article 255 and Article 257. Following the empowerment to carry out punishment, specified in the Criminal Law of 1979 and the Criminal Law of 1996, these provisions also assign many new functions to detention houses, including arranging for meetings with lawyers (Article 37), serving as a detention organ (Article 83 and Article 91) and serving as an interrogation venue after detention (Article 116).

4. [http://www.npc.gov.cn/npc/zgrdzz/2013-12/12/content\\_1816288.htm](http://www.npc.gov.cn/npc/zgrdzz/2013-12/12/content_1816288.htm), last visited on May 3, 2014. In particular, the draft of the Detention House Law was classified as requiring further work as well as review by the State Council.

5. Cheng Lei et al., *On Legislation About Detention Houses*, China Legal Publishing House, 2014, at 16.

6. For details see the Information Office of the State Council of PRC: *National Human Rights Action Plan of China (2009–2010)*, *National Human Rights Action Plan of China (2012–2015)*.

7. Zhao Chunguang, "An Overview of Detention House Management Mechanisms with Chinese Characteristics," *Policing Studies*, No. 12, 2013.

8. *Ibid.*

9. Zhao Chunguang, "Management Mechanism with Chinese Characteristics," *Annual Meeting Collections of Chinese Criminal Law Research Institute 2013* (unpublished), at 14.

10. Article 10 of the International Covenant on Civil and Political Rights.

11. Article 84 of the Standard Minimum Rules for the Treatment of Prisoners stipulates that unconvicted prisoners are presumed to be innocent and shall be treated as such. Article 26 of the European Code of Ethics for Prison Staff passed by the Committee of Ministers of the European Council in May 2012 stipulate that for those who haven't been convicted by a court, law enforcement officers of prisons should respect their right to the presumption of innocence. Of particular note, prisons around the world generally keep both the convicted and the unconvicted in custody by categories, which is different from China where detention places are divided into detention houses and prisons. Of course for the unconvicted, both the UN prison convention and the jailing orders of all countries have made different rules regarding the convicted.

12. The content of the above four articles is as follows: No one shall be guilty of an offense without a judgment by the people's court in accordance with the law; the onus of proof of the guilt of the defendant in an indictment shall be on the people's procuratorate; no one shall be forced to prove his guilt; if the evidence is insufficient and thus the defendant cannot be found guilty, he shall be found not guilty accordingly on account of the fact that the evidence is insufficient and the accusation unfounded.

13. Article 5 of European Prison Rules.

14. Dirk Van Zyl Smit and Sonja Snacken, *Principles of European Prison Law and Policy*, Oxford University Press, 2009, at 103.

15. Pre-trial detention is a natural state after being detained or arrested. The nature of mandatory measures is not substantive punishment but only preventive measures. Yet from the nature of rights interference, mandatory measures are actually a deprivation and restriction of citizens' rights.

16. Articles 6 and 7 of European Prison Rules.

17. Wang Yunhai, *The Legal Fundamentals of Prison Correction*, China Renmin University Press, 2010, at 127.
18. *Ibid.*, at 128.
19. Article 19 of Standard Minimum Rules for the Treatment of Prisoners; Article 21 of European Prison Rules.
20. Bureau of Prisons, Ministry of Public Security, Notice on Fully Implementing Bedding Rules in Detention Houses (MPSBP, [2010] No. 179).
21. The Detention House Law of the People's Republic of China (Exposure Draft) recently put forward by the Ministry of Public Security only stipulates that "the construction standards for detention houses will be jointly developed by the Ministry of Public Security, the Ministry of Housing and Urban-Rural Development and the National Development and Reform Commission of the State Council."
22. Article 37 of Standard Minimum Rules for the Treatment of Prisoners; Article 24 of European Prison Rules.
23. Ministry of Public Security, Notice to Standardize and Enhance the Management of Detention Houses to Ensure the Physical Health of Detainees (MPSBP, [2010] No. 214).
24. Office of the Central Committee for Comprehensive Management of Public Security, Ministry of Public Security, Supreme People's Court, Supreme People's Procuratorate, Ministry of Justice, National Development and Reform Commission, Ministry of Finance, Ministry of Housing and Urban-Rural Development and National Health and Family Planning Commission, Opinions on Comprehensive Management of Detention House Security (CCCMPS, [2010] No. 34).
25. Article 21 of the Detention House Law of the People's Republic of China (Exposure Draft) clearly discusses the socialization of medical care in detention houses, advocating that the medical care of detainees should be included in the local disease prevention and control framework. Local medical administrative departments should assign medical care institutions to establish clinics or branches to take charge of the medical work of detention houses in counties or in cities divided into districts.
26. Articles 41 and 42, Standard Minimum Rules for the Treatment of Prisoners; Article 29, European Prison Rules.
27. Ministry of Justice, Reply on Religious Belief and Religious Activities of Prisoners and Persons Reeducated by Labor in Prisons (MoJ, [1992] No. 035).
28. Han Dayuan et al., *Topic Research on the Constitution*, second edition, China Renmin University Press, 2008, at 387.
29. Paragraphs 2 to 4, Article 36 of the Constitution stipulate that "No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination."

30. As of Aug. 2014, 73 UN member states had approved this optional protocol and another 20 states had signed. Most of these states are located in Europe, Africa and Oceania. The 104 states that haven't approved or signed it are mainly located in Asia, the Americas and Russia. For details, see data published by the UN Commission on Human Rights, [http://indicators.ohchr.org/maps/OHCHR\\_Map\\_OP-CAT.pdf](http://indicators.ohchr.org/maps/OHCHR_Map_OP-CAT.pdf), last visited on Oct. 24, 2014. The Chinese government approved the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1986 and signed it in 1988. But so far the optional protocol has not been signed.

31. Sir Nigel Rodley, "Preventing Torture," translated by Chen Weidong et al., in *Euro-Sino Comparative Research On Combating Torture*, Peking University Press, 2008.

32. Bureau of Prisons, Ministry of Public Security, Rules on Handling Complaints of Detainees in Detention Houses (MPSBP, [2011] No. 385); Bureau of Prisons, Ministry of Public Security, Rules on Inspection of Detention Houses by Invited Inspectors (MPSBP, [2011] No. 379); Office of Prison Inspection, Supreme People's Procuratorate, Opinions on Inspection Work of Office of Prison Inspection of People's Procuratorate at Higher Levels (SPPOPI, [2012] No. 6).

33. The Detention House Law (Exposure Draft) drafted by the Ministry of Public Security doesn't pay enough attention to inspection systems and complaint handling mechanisms. It only says that "detention houses should employ supervisors of law enforcement, who, with valid documentation, can enter detention houses to exercise the duty of inspection." As for the complaint handling procedure when detainees' rights are infringed, it's silent.